**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

| | |
|---|---|
| **CORAL BAY NICKEL CORPORATION,** Petitioner, | **CTA CASE NO. 8641** Members: |
| - versus - | **CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS, *JJ.*** |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: AUG 2 5 2015 4:30 p.m. |

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# DECISION

**CASTAÑEDA, JR.**, ***J.***:

In this Petition for Review, petitioner Coral Bay Nickel Corporation seeks to refund the total amount of P28,032,089.95, representing its excess and unutilized Input Value Added Tax from purchases of goods and services attributable to zero-rated sales for the taxable year 2011.

**FACTS**

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, with principal office address at Barangay Rio Tuba, Municipality of Bataraza, Palawan. It is a Value Added Tax (VAT)-registered entity with Certificate of Registration No. OCN 8RC0000035523 and assigned with Taxpayer's Identification

Number 005-961-540-000 VAT.[1] Likewise, it is registered with the Philippine Economic Zone Authority with Certificate of Registration No. 02-072 at the Rio Tuba Export Processing Zone.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to refund internal revenue taxes, fees, other charges, and penalties imposed in relation thereto. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 1, 2011, petitioner entered into an Off-Take Agreement[3] with Sumitomo Metal Mining Co., Ltd. (Sumimoto), allegedly a corporation organized and existing under the laws of Japan. Pursuant to said agreement, petitioner exported nickel cobalt mixed sulfide to Sumimoto.

Petitioner filed with the BIR, through the Electronic Filing and Payment System (EFPS), its quarterly VAT Returns for the taxable year 2011 on the following dates:

| Quarter (Taxable Year 2011) | Original Return | Amended Return |
|---|---|---|
| 1st | April 19, 2011[4] | |
| 2nd | July 12, 2011[5] | May 28, 2012[6] |
| 3rd | October 17, 2011[7] | |
| 4th | January 18, 2012[8] | May 28, 2012[9] |

On November 29, 2012,[10] petitioner filed with the Large Taxpayers Excise Audit Division I of the BIR its administrative claim for refund in the amount of ₱28,032,089.95, representing its unutilized input VAT for taxable year 2011.

However, respondent failed to act on petitioner's administrative claim. Thus, on April 18, 2013, petitioner filed the instant Petition for Review. gr

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[1] Pars. 1, 4 and 5, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 321.
[2] Exhibit "P-1".
[3] Exhibit "P-11".
[4] Exhibit "P-12".
[5] Exhibit "P-13-a".
[6] Exhibit "P-13".
[7] Exhibit "P-14".
[8] Exhibit "P-15-a".
[9] Exhibit "P-15".
[10] Exhibit "P-9".

In her Answer,[11] respondent raised the following special and affirmative defenses: (1) The Court has no jurisdiction over petitioner's claim for tax refund because petitioner failed to exhaust administrative remedies and it likewise failed to submit supporting documents with respect to its claim; (2) Petitioner failed to establish that it is entitled to its claim for refund; and (3) Claims for tax exemption must be justified by the clearest grant of the law.

On November 7, 2013, both parties filed their Joint Stipulation of Facts and Issues.[12] On November 22, 2013, the Court issued the Pre-Trial Order.[13]

To support its claim, petitioner presented witnesses Mr. Allen Roy T. Catacutan[14] - Tax and Audit Officer of petitioner; Mr. John S. Barrientos[15] - QS/CSR Manager of SMCC Philippines, Inc.; Engr. Zosimo Oliver P. Villa[16] - A Geodetic Engineer; and Mr. Enrico T. Pizarro[17] – Court Commissioned Independent Certified Public Accountant. Likewise, petitioner formally offered[18] its evidence on September 5, 2014.

On the other hand, respondent's counsels manifested that they will not present evidence during the hearing[19] held on October 13, 2014. As such, the Court ordered the parties to file their memoranda. Petitioner filed its Memorandum[20] on December 10, 2014 while respondent failed to file the same. Subsequently, the instant case was submitted for decision on December 16, 2014.[21]

Hence, this Decision. Jz

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[11] Docket, pp. 138-150.
[12] Docket, pp. 321-327.
[13] Docket, pp. 440-450.
[14] Exhibit "P-122", Amended Judicial Affidavit of Allen Roy T. Catacutan, Docket, pp. 334-345; Minutes of the Hearing dated November 13, 2013, Docket, p. 430.
[15] Exhibit "P-123", Judicial Affidavit of John S. Barrientos, Docket, pp. 276-283; Exhibit "P-124", Supplemental Judicial Affidavit of John S. Barrientos, Docket, pp. 455-461; Minutes of the Hearing dated December 9, 2013, Docket, p. 522.
[16] Exhibit "P-125", Judicial Affidavit of Engr. Zosimo Oliver P. Villa, Docket, pp. 286-294; Minutes of the Hearing dated January 15, 2014, Docket, p. 545.
[17] Exhibit "P-27", Amended Judicial Affidavit of Enrico T. Pizarro, Docket, pp. 561-575; Minutes of the Hearing dated April 21, 2014, Docket, p. 578; Exhibit "P-128", Supplemental Judicial Affidavit of Enrico T. Pizarro, Docket, pp. 602-607; Minutes of the Hearing dated August 6, 2014, Docket, p. 609.
[18] Formal Offer of Evidence, Docket, pp. 616-642.
[19] Minutes of the Hearing dated October 13, 2014, Docket, p. 652.
[20] Docket, pp. 661-684.
[21] Resolution, Docket, p. 685.

## ISSUES

The parties submitted the following issues[22] for resolution of the Court:

> "Whether petitioner is entitled to refund or issuance of tax credit certificate in the amount of Twenty Eight Million Thirty Two Thousand Eighty Nine and 95/100 Pesos (₱28,032,089.95) on its unutilized input VAT attributable to its zero rated sales for the period of January 1, 2011 to December 31, 2011.
>
> a. Whether petitioner is engaged in zero-rated or effectively zero-rated sales;
>
> b. Whether the input taxes being claimed are due or paid;
>
> c. Whether the input taxes being claimed have not been applied against output taxes and in the succeeding quarters;
>
> d. Whether the input taxes are attributable to zero-rated or effectively zero-rated sales;
>
> e. Whether the claim is filed within two years after the close of the taxable quarter when such sales were made;
>
> f. Whether petitioner has complied with the provisions of Section 112 of the NIRC of 1997, as amended, in the prescriptive period for filing administrative and judicial claims for refund and/or issuance of tax credit; and
>
> g. Whether petitioner has exhausted all administrative remedies before filing the judicial claim."

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[22] Summary of Issues to be Resolved, JSFI, Docket, pp. 322-323.

To encapsulate, the main issues to be resolved in this case are: (1) Whether the Court has jurisdiction to entertain the instant Petition; and (2) Whether petitioner is entitled to its claim for refund or tax credit.

## DISCUSSION

### The Court has jurisdiction to entertain the instant Petition

Section 112 (A) and (C) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended), 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 (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."
>
> 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."

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*,[23] the Supreme Court held that:

"Section 112(D) of the 1997 Tax Code is clear, unequivocal, and categorical that the Commissioner has 120 days to act on an administrative claim. The taxpayer can file the judicial claim (1) ***only within thirty days after the Commissioner partially or fully denies the claim*** within the 120- day period, or (2) ***only within thirty days from the expiration of the 120- day period*** if the Commissioner does not act within the 120-day period.

There can be no dispute that upon effectivity of the 1997 Tax Code on 1 January 1998, or more than five years *before* San Roque filed its administrative claim on 28 March 2003, the law has been clear: the 120- day period is mandatory and jurisdictional. San Roque's claim, having been filed administratively on 28 March 2003, is governed by the 1997 Tax Code, not the 1977 Tax Code. Since San Roque filed its judicial claim before the expiration of the 120-day mandatory and jurisdictional period, San Roque's claim cannot prosper."

In the case of *Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.*,[24] the Supreme Court explained that the 2-year period under Section 112(A) of the NIRC of 1997, as amended, applies only to the filing of administrative claims. 

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[23] G.R. Nos. 187485, 196113 and 197156, 12 February 2013.
[24] G.R. No. 184145, December 11, 2013.

Thus, petitioner may file its administrative claim within two (2) years after the close of the taxable quarter when the sales were made. Consequently, it may file a judicial claim: (1) within thirty days after the Commissioner partially or fully denies the claim within the 120-day period; or (2) within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

In the instant case, the claim covers the four taxable quarters of 2011. Counting two years from the close of the subject taxable quarters, petitioner has until the following dates within which to file its administrative claim:

| Period Covered | Close of the taxable quarter | Last day to file Administrative Claim | Date of filing of Administrative Claim |
|---|---|---|---|
| January 1 to March 31, 2011 | March 31, 2011 | March 31, 2013 | November 29, 2012 |
| April 1 to June 30, 2011 | June 30, 2011 | June 30, 2013 | |
| July 1 to September 30, 2011 | September 30, 2011 | September 30, 2013 | |
| October 1 to December 31, 2011 | December 31, 2011 | December 31, 2013 | |

Accordingly, petitioner's judicial claim was timely filed, as shown below:

| Period Covered | Date of filing of Administrative Claim | End of 120-day period | End of 30 days | Date of Filing of Judicial Claim |
|---|---|---|---|---|
| January 1 to December 31, 2011 | November 29, 2012 | March 29, 2013 | April 28, 2013 | April 18, 2013 |

Considering the foregoing, the Court has jurisdiction to entertain the instant Petition.

**Petitioner is partially entitled to its claim for refund**

After determining the timeliness of the Petition, the Court shall proceed to determine whether petitioner complied with the remaining requisites under Section 112(A) of the NIRC of 1997, as amended, *viz:* 9r

1. The taxpayer is VAT-registered;

2. The taxpayer is engaged in sales which are zero-rated (*i.e.*, export sales) or effectively zero-rated;

3. The input taxes were incurred or paid;

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

5. the input taxes were not applied against any output tax liability; and

6. in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

As to first requisite, petitioner presented its BIR Certificate of Registration (BIR Form No. 2303)[25] to prove that it is a VAT registered entity.

Petitioner's original and amended Quarterly VAT returns (BIR Form No. 2550Q) filed with the BIR reveals that it declared zero-rated sales for the taxable year 2011 in the aggregate amount of P17,184,044,825.54, as shown below:

| Period Covered | Exhibit No. | Amount of Zero Rated Sales (in PHP) (Line 17) | Amount of Zero Rated Sales (in USD)[26] |
|---|---|---|---|
| 1st Quarter | P-12, P-84 | P 4,931,033,580.95 | $ 112,538,231.54 |
| 2nd Quarter – *Amended* | P-13, P-85 | 3,297,748,955.36 | 76,359,434.76 |
| 3rd Quarter | P-14, P-86 | 5,712,726,012.79 | 132,548,175.28 |
| 4th Quarter – *Amended* | P-15, P-87 | 3,242,536,276.44 | 74,405,947.45 |
| | **TOTAL** | **P 17,184,044,825.54** | **$ 395,851,789.03** |

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[25] Exhibit P-77.
[26] Exhibit P-126, Amended ICPA Report dated April 11, 2014, p. 7.

The relevant provision in determining whether petitioner's transactions are subject to VAT at zero percent (0%) is Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. It provides:

> "SEC. 106. **Value-Added Tax on Sale of Goods or Properties.** –
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '**export sales**' means:
>
> (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);"

Hence, in order for an export sale to qualify as zero-rated, the following conditions must be present:

1. That there was sale and actual shipment of goods from the Philippines to a foreign country;

2. That the sale was made by a VAT registered person;

3. That the sale was paid for in acceptable foreign currency or its equivalent in goods and services; and

4. That the payment was accounted for in accordance with the rules and regulations of the BSP.

Under Section 113(A)(1),(B)(1),(2)(c), and (3) of the NIRC of 1997, as amended, and Section 4.113-1(A)(1),(B)(1), and (2)(c) of Revenue Regulations (RR) No. 16-05, a VAT taxpayer 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:
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (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;
>
> xxx xxx xxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx xxx xxx"
>
> "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 gr

xxx xxx xxx

> 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 Receipts 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 of 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 obliged to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

> (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:"*(Emphasis Supplied)*

Thus, any VAT-registered person claiming VAT zero-rating on direct export sales must present at least three (3) types of documents, *to wit:*

1) the sales invoice as proof of sale of goods;

2) 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

3) the 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.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Moreover, the sales invoices supporting the export sales must be duly registered with the BIR and must contain all the required information under relevant laws and regulations, such as the printed word "zero-rated" and the taxpayer's TIN-VAT number.

Petitioner proved that it is engaged in zero-rated sales by presenting as evidence the following documents: BIR Certificate of Registration[27], PEZA Certificate of Registration No. 02-072[28], Off-take Agreement with Sumitomo Metal Mining Co., Ltd.[29], sales invoices[30], provisional sales invoices[31], bills of lading[32], Bank of Tokyo-Mitsubishi UFJ incoming foreign remittance and advice of foreign incoming remittance.[33]

After considering the evidence presented by petitioner, this Court finds that the total sales in the amount of P17,184,044,825.54 for the period January 1, 2011 to December 31, 2011 qualify for VAT-zero rating.

After finding that 100% of petitioner's export sales are zero-rated, the Court shall now proceed to determine whether petitioner incurred or paid input taxes in connection thereto, and whether said input taxes were not applied against any output tax liability of petitioner.

Based on the quarterly VAT returns for taxable year 2011 filed by petitioner and verified by the Court commissioned Independent CPA (ICPA), petitioner's input VAT from various purchases of goods and services amounted to P28,032,089.95[34], broken down as follows:

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[27] Exhibit P-77.
[28] Exhibit P-1, Docket (Vol I), p. 167.
[29] Exhibit P-11, Docket (Vol. I), pp. 207-219.
[30] Exhibits P-83.1a to P-83.18a.
[31] Exhibits P-83.1c to P-83.18c.
[32] Exhibits P-83.1b to P-83.18b.
[33] Exhibits P-129-a to P-129-w.
[34] Exhibit P-126, Amended Independent CPA Report, p. 9.

| Period Covered | Amount of Input VAT | | Exhibit Reference |
|---|---|---|---|
| | **Monthly Return** | **Quarterly Return** | |
| January | P 1,655,618.89 | | |
| February | 1,694,673.98 | | |
| March | 1,123,471.68 | | |
| **1st Quarter** | | **P 4,473,764.55** | **Exhibit P-84** |
| April | P 2,049,068.88 | | |
| May | 2,933,261.27 | | |
| June | 480,537.40 | | |
| **2nd Quarter** | | **5,462,867.55** | **Exhibit P-85** |
| July | P 4,195,937.22 | | |
| August | 9,074,653.43 | | |
| September | 1,479,559.49 | | |
| **3rd Quarter** | | **14,750,150.14** | **Exhibit P-86** |
| October | P 313,373.61 | | |
| November | 502,192.48 | | |
| December | 2,143,904.20 | | |
| **4th Quarter** | | **2,959,470.29** | **Exhibit P-87** |
| **Total for the taxable year** | | **27,646,252.53** | |
| **2011 Amortization of Capital Goods purchased over 1 Million** | | **385,837.42** | **Exhibits P-84, P-85, P-86, and P-87** |
| **TOTAL** | | **P 28,032,089.95** | |

To substantiate the foregoing input VAT, petitioner presented various invoices and official receipts[35] issued by its suppliers.

The ICPA found that out of the total claim of P28,032,089.95, only the amount of P27,041,864.53 input VAT was duly substantiated[36], as shown below:

| | | | | Amount | Exhibit Reference |
|---|---|---|---|---|---|
| Total amount of input VAT being claimed during the year-end | | | | **P 28,032,089.95** | |
| A. | | Invoices with appropriate supporting documents and consumed outside PEZA | | | |
| | a | Goods | | P 685,703.38 | Exhibit P-115, page 2 of 2 |
| | b | Services | | 26,018,958.82 | Exhibit P-116, page 21 of 21 |
| | c | Annual Amortization | | 337,202.33 | |
| | | **Total** | | **P 27,041,864.53** | |
| B. | | Exceptions Noted | | | |
| | 1 | Summary of documents where input VAT on local purchases of goods and services with supporting | | | |

[35] Exhibits P-20 to P-36, P-115 to P-121, inclusive of sub-markings.
[36] Exhibit P-126, Amended Independent CPA Report, p. 13.

| | | | | | |
|---|---|---|---|---|---|
| | | documents not dated within the taxable year. | | | |
| | a | Goods | 37,983.11 | | Exhibit P-117, page 1 of 1 |
| | b | Services | 239,297.64[37] | | Exhibit P-118, page 3 of 3 |
| | | Sub-total | | 277,280.75 | |
| | 2 | Summary of invoices where Input Vat on local purchases of services with supporting documents not containing supplier's TIN. | | 5,003.97 | Exhibit P-119, page 1 of 1 |
| | 3 | Summary of invoices without original receipt. | | 121,957.62 | Exhibit P-120, page 1 of 1 |
| | 4 | Summary of invoices where input VAT supporting documents have not been provided. | | | |
| | a | Services | 222,175.16 | | Exhibit P-121, page 1 of 1 |
| | b | Goods | - | 222,175.16 | |
| | | Total | | **626,417.50** | |
| **Total Input VAT Examined** | | | | **P 27,668,282.03**[38] | |

However, upon further verification of this Court, out of the total substantiated input VAT per ICPA report of P27,041,864.53, the following input taxes in the total amount of P3,406,637.95 should be disallowed:

| No. | Exhibit No. | OR/INV. No. | Date | Supplier | Input VAT |
|---|---|---|---|---|---|
| **1** | **Input tax on domestic purchase of service supported by VAT OR but with incomplete TIN** | | | | |
| | P-116.596 | 0962 | 30-Sep-11 | Lengeric Manpower & General Services | 3,747.87 |
| | | | | **Subtotal** | **3,747.87** |

| | | | | | |
|---|---|---|---|---|---|
| **2** | **Input tax on domestic purchase of service supported by not legible VAT OR** | | | | |
| | P-116.230 | 272207 | 11-Jun-11 | Manila North Harbour Port | 121.72 |
| | P-116.440 | 558166 | 14-Oct-11 | Sulpicio Lines | 216.69 |
| | P-116.518 | 27667261 | 29-Sep-11 | LBC Express-MMA, Inc. | 13.39 |
| | P-116.666 | 24326 | 13-Dec-11 | Tricom Systems (Philippines), Inc. | 5,968.93 |
| | | | | **Subtotal** | **6,320.73** |

[37] Per ICPA Report, amount used is P239,278.50 but it should be P239,297.64 per Exhibit P-118.

[38] Total is different from ICPA report, in congruence with note 28.

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|---|---|---|---|---|---|
| **3** | **Input tax on domestic purchase of service supported by VAT OR but with incomplete details of Authority to Print (ATP)** | | | | |
| | P-116.639 | 38192 | 09-Aug-11 | Penanshin Shipping (Phils.) Inc. | 612.00 |
| | | | | **Subtotal** | **612.00** |

| | | | | | |
|---|---|---|---|---|---|
| **4** | **Input tax on domestic purchase of service supported by VAT OR but input tax not separately indicated** | | | | |
| | P-116.687 | 04920,SOA-IOL11-023 | 11-Mar-11 | I-Merge Online, Inc. | 4,457.14 |
| | P-116.833 | 184142 | 25-Feb-11 | Manila North Harbour Port | 21,665.04 |
| | P-116.932 | 13300 | 20-Mar-11 | Asian Freepoints, Inc. | 980.26 |
| | | | | **Subtotal** | **27,102.44** |

| | | | | | |
|---|---|---|---|---|---|
| **5** | **Input tax on domestic purchase of goods supported by VAT Invoice but not duly registered with the BIR (No ATP)** | | | | |
| | P-115.135 | SI-613115 | 19-Nov-11 | Citimotors Inc | 11,212.34 |
| | | | | **Subtotal** | **11,212.34** |

| | | | | | |
|---|---|---|---|---|---|
| **6** | **Input tax on domestic purchase of service supported by VAT OR but with TIN-V only** | | | | |
| | P-116.672 | 1482, SI-2031 | 04-Mar-11 | Cendaur Engineering | 159,845.63 |
| | P-116.673 | 1486, SI-2030 | 11-Mar-11 | Cendaur Engineering | 72,685.29 |
| | P-116.674 | 1491, SI-2035 | 01-Apr-11 | Cendaur Engineering | 155,544.83 |
| | P-116.675 | 1601, SI-2043 | 30-May-11 | Cendaur Engineering | 169,599.00 |
| | P-116.676 | 1616, SI-2217 | 19-Aug-11 | Cendaur Engineering | 242,065.87 |
| | P-116.677 | 1619, SI-2220 | 26-Aug-11 | Cendaur Engineering | 199,700.46 |
| | P-116.1279 | 1604, SI-2042 | 10-Jun-11 | Cendaur Engineering | 173,272.66 |
| | | | | **Subtotal** | **1,172,713.74** |

| | | | | | |
|---|---|---|---|---|---|
| **7** | **Input tax on domestic purchase of service supported by VAT Zero-Rated OR** | | | | |
| | P-116.249 | 036651 | 11-Jul-11 | China Shipping Container Lines | 7,920.00 |
| | | | | **Subtotal** | **7,920.00** |

| | | | | | |
|---|---|---|---|---|---|
| **8** | **Input tax on domestic purchase of goods supported by VAT Invoice but with note: Not Valid to Claim Input** | | | | |
| | P-115.80 | SI-0161 | 18-Mar-11 | Air & Odor Management Phils., Inc. | 2,136.00 |
| | | | | **Subtotal** | **2,136.00** |

| | | | | | |
|---|---|---|---|---|---|
| **9** | **Input tax on domestic purchase of service supported by VAT OR but with note: collected in behalf of CEN Holdings, Inc** | | | | |
| | P-116.522 | 78872 | 11-Jan-11 | Century Properties | 64,032.48 |
| | P-116.523 | 79006 | 04-Feb-11 | Century Properties | 64,032.48 |
| | P-116.524 | 79095 | 24-Feb-11 | Century Properties | 6,480.00 |
| | P-116.525 | 80275 | 12-Oct-11 | Century Properties Management | 74,980.83 |
| | P-116.818 | 80206 | 29-Sep-11 | Century Properties | 1,800.00 |

| | | | | | |
|---|---|---|---|---|---|
| | | | | Management | |
| | P-116.819 | 79198 | 14-Mar-11 | Century Properties Management | 64,032.48 |
| | | | | **Subtotal** | **275,358.27** |

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|---|---|---|---|---|---|
| **10** | **Input tax on domestic purchase of service without supporting document (not in binder)** | | | | |
| | P-116.702 | 05801 | 16-Sep-11 | Adways Philippines Inc. | 921.87 |
| | | | | **Subtotal** | **921.87** |

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| **11** | **Input tax on domestic purchase of goods/services supported by VAT Invoice/OR but without petitioner's TIN** | | | | |
| | P-115.134 | SI-22166 | 19-Feb-11 | Upshaw Industrial Corporation | 4,397.14 |
| | P-116.568 | 27415 | 25-Mar-11 | Jupiter Arms Properties, Inc. | 1,612.80 |
| | | | | **Subtotal** | **6,009.94** |

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|---|---|---|---|---|---|
| **12** | **Input tax on domestic purchase of service supported by VAT OR but with no date/year** | | | | |
| | P-116.746 | NH-L0551172-0 | 10-Mar-11 | Philippine Ports Authority | 7.56 |
| | P-116.892 | NH-L0521250-0 | 28-Jan-11 | Philippine Port Authority | 7.56 |
| | | | | **Subtotal** | **15.12** |

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| **13** | **Overclaimed input tax on domestic purchase of goods supported by VAT Invoice** | | | | |
| | P-115.73 | SI-32709 | 14-Oct-11 | Johnco Commercial Inc (P 6,927.60-1,200) | 5,727.60 |
| | | | | **Subtotal** | **5,727.60** |

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| **14** | **Input tax on domestic purchase of service supported by VAT OR but issued to petitioner/PCBSI/Prudential Customs Broker Services, Inc.** | | | | |
| | P-116.25 to P-116.30 | various | various | Philippine Ports Authority | 91,958.34 |
| | P-116.50 to P-116.57 | various | various | Philippine Ports Authority | 11,582.60 |
| | P-116.60 to P-116.85 | various | various | Philippine Ports Authority | 166,959.27 |
| | P-116.87 to P-116.88 | various | 14-Mar-11 | Philippine Ports Authority | 44,173.64 |
| | P-116.90 to P-116.92 | various | various | Philippine Ports Authority | 29,577.93 |
| | P-116.96 | PP-0038518-8 | 24-Feb-11 | Philippine Ports Authority | 9,235.80 |
| | P-116.98 | PP-0038643-6 | 23-Mar-11 | Philippine Ports Authority | 25,623.98 |
| | P-116.119 to P-116.129 | various | various | Philippine Ports Authority | 146,873.87 |
| | P-116.140 to P-116.145 | various | various | Philippine Ports Authority | 115,692.35 |
| | P-116.152 to P-116.153 | various | 27-Apr-11 | Philippine Ports Authority | 41,725.93 |
| | P-116.173 to P-116.178 | various | various | Philippine Ports Authority | 2,039.71 |
| | P-116.191 to | various | various | Philippine Ports | 3,989.25 |

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| | P-116.197 | | | Authority | |
| | P-116.199 to P-116.201 | various | various | Philippine Ports Authority | 53,811.62 |
| | P-116.223 to P-116.227 | various | various | Philippine Ports Authority | 98,585.28 |
| | P-116.267 to P-116.269 | various | 14-Jun-11 | Philippine Ports Authority | 1,731.86 |
| | P-116.279 to P-116.284 | various | various | Philippine Ports Authority | 4,333.94 |
| | P-116.640 to P-116.641 | various | 04-Jan-11 | Philippine Ports Authority | 35,506.93 |
| | P-116.717 | PP-0038647-4 | 23-Mar-11 | Philippine Ports Authority | 1,379.52 |
| | P-116.814 to P-116.816 | various | various | Prudential Customs Brokerage Services, Inc. | 5,190.65 |
| | P-116.1094 | PP-0038778-4 | 27-Apr-11 | Philippine Ports Authority | 5,653.63 |
| | P-116.1133 to P-116.1139 | various | various | Philippine Ports Authority / Manila North Harbour Port | 2,249.40 |
| | P-116.1156 to P-116.1158 | various | various | Manila North Harbour Port | 367.27 |
| | P-116.1163 to P-116.1165 | various | various | Manila North Harbour Port | 895.55 |
| | P-116.1175 to P-116.1177 | various | various | Manila North Harbour Port | 598.95 |
| | P-116.1179 to P-116.1187 | various | various | Philippine Ports Authority / Manila North Harbour Port | 114.86 |
| | P-116.1213 to P-116.1214 | various | 17-Oct-11 | Philippine Ports Authority | 2,025.36 |
| | P-116.1286 | PP-L0185377-2 | 13-Sep-11 | Philippine Ports Authority | 12.43 |
| | P-116.1304 to P-116.1309 | various | various | Philippine Ports Authority | 4,194.38 |
| | P-116.1312 to P-116.1328 | various | various | Philippine Ports Authority | 47,369.90 |
| | P-116.1345 to P-116.1355 | various | various | Philippine Ports Authority | 17,814.54 |
| | | | | **Subtotal** | **971,268.74** |

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| **15** | **Input tax on domestic purchase of service supported by VAT OR but issued to petitioner/Nestor Buerano** | | | | |
| | P-116.31 to P-116.34 | various | various | Philippine Ports Authority | 841.33 |
| | P-116.43 to P-116.47 | various | 06-Jan-11 | Philippine Ports Authority | 1,620.32 |
| | P-116.58 to P-116.59 | various | various | Philippine Ports Authority | 436.24 |
| | P-116.89 | NL-L003579185-4 | 11-Feb-11 | Philippine Ports Authority | 186.96 |
| | P-116.97 | NL-L003580133-7 | 17-Feb-11 | Philippine Ports Authority | 124.64 |
| | P-116.99 | NL-L003584955-1 | 25-Feb-11 | Philippine Ports Authority | 436.24 |
| | P-116.115 to P-116.118 | various | 08-Feb-11 | Philippine Ports Authority | 1,558.00 |
| | P-116.146 to P-116.149 | various | 25-Feb-11 | Philippine Ports Authority | 1,558.00 |
| | P-116.154 to | various | 20-Apr-11 | Philippine Ports | 1,869.60 |

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| | P-116.158 | | | Authority | |
| | P-116.161 to P-116.166 | various | 18-Apr-11 | Philippine Ports Authority | 1,620.32 |
| | P-116.179 to P-116.186 | various | various | Philippine Ports Authority | 3,116.00 |
| | P-116.237 to P-116.248 | various | various | Philippine Ports Authority | 4,518.25 |
| | P-116.250 to P-116.258 | various | various | Philippine Ports Authority | 3,926.16 |
| | P-116.270 to P-116.274 | various | 27-May-11 | Philippine Ports Authority | 2,181.20 |
| | P-116.410 to P-116.415 | various | 12-Jul-11 | Philippine Ports Authority | 2,492.80 |
| | P-116.420 | 913175 | 16-Aug-11 | People's Air Cargo | 131.22 |
| | P-116.453 to P-116.456 | various | various | Philippine Ports Authority | 1,308.72 |
| | P-116.460 | NL-L003812868-4 | 07-Oct-11 | Philippine Ports Authority | 62.32 |
| | P-116.477 | NL-L003818182-3 | 12-Oct-11 | Philippine Ports Authority | 93.49 |
| | P-116.669 to P-116.671 | various | 23-Mar-11 | Philippine Ports Authority | 1,246.40 |
| | P-116.752 to P-116.759 | various | various | Philippine Ports Authority | 2,866.72 |
| | P-116.796 to P-116.806 | various | various | Philippine Ports Authority | 4,362.40 |
| | P-116.847 to P-116.853 | various | 08-Feb-11 | Philippine Ports Authority | 2,804.40 |
| | P-116.886 to P-116.887 | various | 31-Aug-11 | International Container Terminal Services, Inc. | 498.56 |
| | P-116.921 to P-116.934 | various | 22-Jun-11 | Philippine Ports Authority | 2,243.52 |
| | P-116.1095 to P-116.1107 | various | various | Philippine Ports Authority | 4,362.40 |
| | P-116.1124 to P-116.1128 | various | 04-Oct-11 | Philippine Ports Authority | 2,181.20 |
| | P-116.1199 to P-116.1202 | various | 05-May-11 | Philippine Ports Authority | 1,558.00 |
| | P-116.1207 to P-116.1211 | various | 12-Oct-11 | Philippine Ports Authority | 2,181.20 |
| | P-116.1265 | NL-L003752646-2 | 15-Aug-11 | Philippine Ports Authority | 436.24 |
| | P-116.1296 to P-116.1300 | various | 13-Apr-11 | Philippine Ports Authority | 1,869.60 |
| | | | | **Subtotal** | **54,692.45** |

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| **16** | **Input tax on domestic purchase of service supported by VAT OR but issued to petitioner/Prudential Shipping Agency/PSA** | | | | |
| | P-116.233 to P-116.236 | various | various | Philippine Ports Authority | 59,896.48 |
| | P-116.264 to P-116.266 | various | various | Philippine Ports Authority | 1,409.80 |
| | P-116.349 | PP-0039313-7 | 12-Aug-11 | Philippine Ports Authority | 15,851.57 |
| | P-116.393 to P-116.398 | various | various | Philippine Ports Authority | 96,090.62 |
| | P-116.421 to P-116.424 | various | various | Philippine Ports Authority | 31,885.50 |
| | P-116.457 to P-116.459 | various | various | Philippine Ports Authority | 67,836.36 |

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| | P-116.461 to P-116.476 | various | various | Philippine Ports Authority | 75,263.54 |
| | P-116.490 to P-116.493 | various | various | Philippine Ports Authority | 71,177.37 |
| | P-116.764 to P-116.774 | various | various | Philippine Ports Authority/CEVA Logistics Phils. | 114,223.45 |
| | P-116.880 to P-116.882 | various | 12-Aug-11 | Philippine Ports Authority | 42,655.62 |
| | P-116.1216 to P-116.1220 | various | various | Philippine Ports Authority | 5,389.26 |
| | P-116.1259 to P-116.1274 | various | various | Philippine Ports Authority | 131,031.21 |
| | P-116.1329 to P-116.1333 | various | various | Philippine Ports Authority | 5,501.67 |
| | P-116.1356 to P-116.1374 | various | various | Philippine Ports Authority | 118,311.11 |
| | | | | **Subtotal** | **836,523.56** |

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| **17** | **Input tax on domestic purchase of service supported by VAT OR but not duly registered with the BIR** | | | | |
| | P-116.519 | 27667260 | 29-Sep-11 | LBC Express-MMA, Inc. | 13.39 |
| | P-116.936a to P-116.1086b | various | various | Philippine Long Distance Telephone | 24,341.89 |
| | | | | **Subtotal** | **24,355.28** |
| | | | | **GRAND TOTAL** | **3,406,637.95** |

Furthermore, the annual amortization of P337,202.33 pertaining to purchase of capital goods exceeding P1 Million should likewise be disallowed for petitioner's failure to substantiate the same with invoices and official receipts.

Hence, only the total amount of P23,298,024.25 is duly substantiated pursuant to Section 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and implemented by Sections 4.110-2, 4.110-8 of Revenue Regulation (RR) 16-05, computed as follows:

| | | | |
|---|---|---|---|
| **Claimed Input Tax** | | | **P 28,032,089.95** |
| Less: Disallowances | | | |
| 1. Unsupported input taxes: | | | |
| Claimed input taxes | P 28,032,089.95 | | |
| Total input taxes examined by ICPA | 27,668,282.03 | P 363,807.92 | |
| 2. Exceptions noted by the ICPA | | 626,417.50 | |
| 3. Disallowances found by the Court | | 3,406,637.95 | |
| 4. Not duly substantiated amortized input taxes on purchase of capital goods | | 337,202.33 | 4,734,065.70 |
| **Substantiated input taxes attributable to zero-rated sales** | | | **P 23,298,024.25** |

9e

To prove that the claimed input taxes were not applied against any output liability in the succeeding taxable period, petitioner offered before this Court its Amended 1st Quarterly VAT Return (BIR Form No. 2550Q) [39] for taxable year 2012. As per examination of the Court, petitioner's input taxes were not applied against any output VAT liability for the first quarter of taxable year 2012, and the claimed input taxes in the amount of P28,032,089.95 were deducted from the total available input tax as an item under VAT Refund/TCC claimed (Line 23D of 2012 Amended 1st Quarter BIR Form No.2550Q).

To conclude, petitioner duly proved that it is entitled to its claim for refund, but in the reduced amount of P23,298,024.25.

**WHEREFORE**, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund be issued in favor of petitioner Coral Bay Nickel Corporation in the reduced amount of P23,298,024.25, representing unutilized input taxes attributable to zero-rated sale of goods for the four taxable quarters of year 2011.

**SO ORDERED.**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**WE CONCUR:**

(On Official Business)
**CAESAR A. CASANOVA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

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[39] Exhibit P-112.

## 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 Section 13 of Article VIII of the Constitution, and the Division's 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