Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

TAGANITO MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9057

Members:
CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
APR 05 2017
3:25 p.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed on May 27, 2015 by petitioner Taganito Mining Corporation against respondent Commissioner of Internal Revenue, seeking the refund of the amount of ₱8,326,025.84, allegedly representing its excess/unutilized input value-added taxes (VAT) paid on its importation and domestic purchases of capital goods with aggregate acquisition cost exceeding ₱1 million, which are attributable to its zero-rated sales for taxable year 2013.

Petitioner is a corporation duly organized and existing under and by virtue of the Philippine laws, with business address at 29/F NAC Tower, 32nd Street, Bonifacio Global City, Taguig/Makati City.[2] It is a VAT-registered entity with Certificate of Registration No. OCN 8RC0000046046[3] dated June 15, 1994 issued by the Bureau of Internal Revenue (BIR). It is also registered[4] with the Board of Investments

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[1] Docket, pp. 10-24.
[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 88.
[3] Exhibit "P-194".
[4] Exhibit "P-195".

(BOI) with BOI Certificate of Registration No. EP 88-306 dated April 14, 1988.[5]

Petitioner is registered[6] with the Securities and Exchange Commission (SEC) with Certificate of Registration No. 138682 issued on March 4, 1987.

Respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner electronically filed its quarterly VAT returns for the taxable year 2013 on the following dates:

Quarterly VAT Returns	Filing Date
1st Quarter 2013[7]	February 24, 2014
2nd Quarter 2012[8]	February 24, 2014
3rd Quarter 2012[9]	February 24, 2014
4th Quarter 2012[10]	November 28, 2014

On December 29, 2014, petitioner filed with the BIR, an application for tax credit/refund[11] of excess input VAT, allegedly paid on its domestic purchases and importation of taxable goods and services and importation of goods including capital goods in accordance with Section 112 (A) and (B) in relation to Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended.[12] On the same date, petitioner submitted[13] its supporting documents for its claim for refund.

Due to respondent's inaction, petitioner filed the present Petition for Review on May 27, 2015.

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[5] Par. 5, JSFI, Docket, p. 90.
[6] Exhibit "P-177".
[7] Exhibits "P-30" to "P-33".
[8] Exhibit "P-47" to "P-50".
[9] Exhibit "P-62" to "P-66".
[10] Exhibit "P-77" to "P-82".
[11] Exhibits "P-1" and "P-5".
[12] Par. 6, JSFI, Docket, p. 90.
[13] Exhibits "P-2", "P-3" and "P-4".

On June 15, 2015, respondent filed his Answer[14], interposing the following 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 P8,326,025.84 allegedly representing excess/unutilized VAT input taxes which have not been allegedly utilized and allegedly amortized in the year 2013 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 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
>
> 8. There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R.* 145526, *16 March 2007:*
>
>> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition of review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner**

[14] Docket, pp. 39-47.

> **to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit**. Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**.' (emphasis and underscoring supplied)

The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX

(For audit involving Claim for Refund / TCC)

A.) Requirements from Taxpayer

I. Requirements mention in Annex B

II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/Refund'

2) Summary List of Local Purchases specifying the following:

xxx xxx xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation – for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has

not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)
a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1 - c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers
1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any
    a) current year/period
    b) previous year/period
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable
8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
11) Sample invoice / s for 'Export/Exempt Sales', if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export sales/ foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Far from complying with the checklist of requirements, petitioner merely stated that it submitted complete documents in support of its administrative claim for refund. This is not a claim for erroneously or illegally collected taxes where petitioner has the discretion of choosing the evidence it deems fit to prove its case. This is a claim for excess but legally collected, unutilized input taxes. It does not have to prove its case because the law already acknowledges it is entitled to refund. Thus, it merely has to substantiate the export sales and the excess/unutilized amount of input taxes attributable to the said export sales. Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

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

Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

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

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

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

xxx xxx xxx"

The Pre-Trial Conference[15] was set on July 23, 2015. Respondent's Pre-Trial Brief[16] was filed on June 29, 2015; while petitioner's Pre-Trial Brief[17] was filed on July 9, 2015.

[15] Notice of Pre-Trial Conference, Docket, pp. 48-49.
[16] Docket, pp. 50-53.
[17] Docket, pp. 55-65.

On August 4, 2015, the parties filed their Joint Stipulation of Facts and Issues[18], which was approved by the Court in its Pre-Trial Order[19] dated August 11, 2015.

On January 4, 2016, petitioner filed its Formal Offer of Evidence. Respondent failed[20] to file his comment on petitioner's Formal Offer of Evidence.

In the Resolution[21] dated February 15, 2016, the Court admitted all of petitioner's exhibits except Exhibit "P-489".

During the hearing[22] on February 24, 2016, respondent made an oral Formal Offer of Evidence, without petitioner's objection, offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5" and "R-5-1". The Court admitted all the exhibits offered by respondent. Thereafter, the Court granted the parties a period of thirty (30) days within which to file their respective memoranda.

Respondent filed his Memorandum[23] on March 28, 2016; while petitioner filed its Memorandum[24], through registered mail, on May 26, 2016. Hence, the case was submitted for decision.[25]

The parties submitted the following issue[26] for the Court's resolution:

> Whether or not petitioner is entitled to the refund of its alleged excess VAT input taxes of Eight Million Three Hundred Twenty-Six Thousand Twenty-Five and 84/100 Pesos (₱8,326,025.84).

Pertinent to the resolution of the present case are the provisions of Sections 112(A) and (C) of the NIRC of 1997, as amended, which state:

[18] Docket, pp. 88-96.
[19] Docket, pp. 98-103.
[20] Records Verification dated January 28, 2016, Docket, p. 383.
[21] Docket, pp. 384-385.
[22] Minutes of the hearing dated February 24, 2016, Docket, pp. 398-399.
[23] Docket, pp. 403-416.
[24] Docket, pp. 426-441.
[25] Resolution dated June 7, 2016, Docket, p. 445.
[26] JSFI, Docket, p. 90.

"**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** **-**

(A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

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

Based on the foregoing, a taxpayer engaged in zero-rated or effectively zero-rated sales may be entitled to a refund or tax credit of unutilized input VAT attributable to such sales upon compliance with the following requisites:

1. the taxpayer is VAT-registered;
2. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
3. the claim must be filed within the prescriptive period;
4. the input taxes were incurred or paid;
5. the input taxes incurred or paid must be attributable to zero-rated or effectively zero-rated sales; and
6. the input taxes were not applied against any output VAT liability.

The Court shall determine first the timeliness of the filing of the present claim.

3rd Requisite: Petitioner's administrative and judicial claims were seasonably filed.

Applying the foregoing provision, petitioner has two (2) years from the close of the taxable quarter when sales were made to file for the issuance of TCC or claim for refund of input VAT attributable to its zero-rated or effectively zero-rated sales. Thus, petitioner's last day for filing its administrative claim for the four (4) quarters of taxable year 2013 fell on the following dates:

Period covered	Last day of the Two-year period
January to March 2013 (1st Quarter)	March 31, 2015
April to June 2013 (2nd Quarter)	June 30, 2015
July to Sept. 2013 (3rd Quarter)	September 30, 2015
October to Dec. 2013 (4th Quarter)	December 31, 2015

Thus, petitioner's administrative claim filed on December 29, 2014 is well within the two (2)-year prescriptive period.

Anent the timeliness of the judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides that respondent has 120 days from the date of the submission of supporting documents within which to act on petitioner's claim.

In this case, petitioner simultaneously submitted its complete supporting documents upon filing of its administrative claim on December 29, 2014. Thus, the 120-day period started and continued to run from December 29, 2014 until April 28, 2015. Upon the lapse of the 120-day period on April 28, 2015, petitioner had thirty (30) days or until May 28, 2015 within which to file its Petition for Review before this Court. In view of respondent's inaction on its claim, petitioner filed the present Petition for Review before this Court on May 27, 2015, which is within the required thirty (30)-day period. Evidently, both the administrative and judicial claims were seasonably filed.

The Court shall now proceed to determine petitioner's compliance with the remaining requisites for the claim of refund.

1st Requisite: Petitioner is VAT-registered.

Indubitably, petitioner is a VAT-registered entity with Certificate of Registration No. OCN 8RC0000042832[27] dated June 15, 1994 issued by the BIR.

2nd Requisite: Petitioner had zero-rated or effectively zero-rated sales.

Petitioner claims that it is primarily engaged in the mining and exporting of nickel saprolite and limonite ore and exploration activities.[28] Further, these ores are 100% exported and/or shipped to foreign countries, as certified to by the BOI in accordance with BIR Revenue Memorandum Order (RMO) No. 9-2000. It also avers that since these export sales were paid for in acceptable foreign currency, specifically, in US Dollars, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the BSP, the same are subject to zero-percent (0%)

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[27] Exhibit "P-194".
[28] Corporate Information, Note 1.a., Audited Financial Statements (Exhibit "P-20", Docket, p. 249.)

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*; xxx"

Pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1) and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, any VAT registered person claiming VAT zero-rated 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 bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, are quoted hereunder for easy reference:

"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;' *(Emphasis 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
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 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:

(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)*

Moreover, the sales invoices supporting the export sales must be duly 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, pursuant to Sections 237 and 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, <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. . . . .'

"**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." *(Emphasis supplied)*

Thus, 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.

In its Quarterly VAT Returns for the four (4) quarters of 2013, petitioner declared zero-rated sales in the total amount of ₱3,273,782,021.06, detailed as follows:

Exhibit	**Period Covered**	**Zero-rated Sales**
P-30	1st Quarter	₱ 214,783,070.68
P-47	2nd Quarter	807,338,142.21
P-62	3rd Quarter	1,222,268,124.41
P-77	4th Quarter	1,029,392,683.76
	Total	**₱ 3,273,782,021.06**

In support of its zero-rated sales for 2013, petitioner submitted various export sales documents, such as, invoices, export declarations/permits, bills of lading, bank credit/debit advices, ore transport permits, outward foreign manifest[29], as well as the billing statements and official receipts[30] issued to PEZA-registered entities, which were examined by the Court-commissioned Independent Certified Public Accountant (ICPA), Ms. Maria Gracia L. Morfe of Morfe Ceneta & Co., CPAs.

Based on the report of the ICPA, petitioner's zero-rated sales were derived from the following zero-rated activities:

[29] Exhibits "P-275" to "P-488", "P-490" to "P-726".
[30] Exhibits "P-735" to "P-754".

	Sales of Ore	Service (Despatch and Materials Handling)	Rental Income	Total Zero-Rated Sales
2013 Export Sales	₱ 2,872,132,855.00	₱ 28,513,222.00		₱ 2,900,646,077.00
2013 PEZA Sales	236,968,008.00	130,561,301.00	₱ 5,606,635.00	373,135,944.00
TOTAL	**₱3,109,100,863.00**	**₱159,074,523.00**	**₱ 5,606,635.00**	**₱3,273,782,021.00**

Upon verification of the submitted documents, the Court finds that out of the ₱3,109,100,863.00 sales of ore, the amount of ₱44,586,628.80 should be disallowed, for the supporting sales invoices were not duly registered with the BIR (without proof of BIR registration or Authority to Print), to wit:

Exhibit	Invoice No.	Disallowed Export Sales	
		In USD	**In PHP***
P-275	524	967,680.00	39,389,414.40
P-277	527	127,680.00	5,197,214.40
	Total		**44,586,628.80**

**Amounts were translated using forex rates per ICPA's schedule of zero-rated sales.*

As to the zero-rated sales of ₱164,681,158.00 (₱159,074,523.00 + ₱5,606,635.00) representing sale of services and rental income, the Court finds that only the sales in the amount of ₱86,080,162.18 were duly substantiated by supporting documents, as detailed below:

Material Handling Services			
Exhibits		**PEZA-Registered Clients**	**Amount**
P-736	P-737	Taganito HPAL Nickel Corporation	₱ 47,884,910.33
P-738	P-739	Taganito HPAL Nickel Corporation	14,945,164.55
P-742	P-743	Taganito HPAL Nickel Corporation	13,380,946.50
P-745	P-746	Visayas Slaked Lime Corporation	4,435,550.00
P-747	P-748	Visayas Slaked Lime Corporation	1,407,140.00
P-749	P-750	Visayas Slaked Lime Corporation	1,532,938.00
P-751	P-752	Visayas Slaked Lime Corporation	2,383,912.96
		sub-total	**₱ 85,970,562.34**
Equipment Rental			
P-740	P-741	Taganito HPAL Nickel Corporation	₱ 109,599.84
		sub-total	**₱ 109,599.84**
		TOTAL	**₱ 86,080,162.18**

The alleged zero-rated sales of ₱76,715,541.34 are without any supporting documents, while the amount of ₱1,885,454.48, although supported by zero-rated official receipt[31], was dated outside the period of claim.

In sum, only the total amount of ₱3,150,594,396.73 qualifies as zero-rated sales for the taxable year 2013, computed as follows:

Sale of Ore	₱ 3,109,100,863.35	
Less: Disallowances	44,586,628.80	₱ 3,064,514,234.55
Service (Despatch and Materials Handling)	₱ 85,970,562.34	
Rental Income	109,599.84	86,080,162.18
Total Valid Zero-Rated Sales		**₱ 3,150,594,396.73**

4th Requisite: The input taxes were incurred or paid.

A perusal of petitioner's Quarterly VAT Returns for 2013 shows that it reported current purchases of capital goods exceeding ₱1 Million amounting to ₱366,716,836.90 with the corresponding input VAT of ₱44,006,020.43, as shown below:

Exhibit	**Period**	**Purchase of Capital Goods exceeding ₱1M**	**Input VAT on Purchase Of Capital Goods exceeding ₱1M**
P-30, Line 21C/D	1st Quarter	₱ 147,858,267.86	₱ 17,742,992.14
P-47, Line 21C/D	2nd Quarter	217,738,033.33	26,128,564.00
P-62, Line 21C/D	3rd Quarter	1,120,535.71	134,464.29
P-77, Line 21C/D	4th Quarter	-	-
	Total	**₱ 366,716,836.90**	**₱ 44,006,020.43**

Upon examination of the supplier's invoices and importation documents supporting the 2013 purchases/importations of capital goods exceeding ₱1 Million, the Court finds that the total input VAT of ₱44,006,020.43 were properly substantiated in accordance with the substantiation requirements prescribed by law. The composition of the substantiated input VAT of ₱44,006,020.43 is detailed as follows:

Exhibit	**Supplier**	**Description**	**Input VAT**
Importation of Capital Goods Exceeding ₱1 Million			
P-226 to P-227	Volvo East Asia Pte Ltd	7 Volvo Hyd Excavator	₱ 4,957,623.00
P-238 to P-242	Marubeni Corporation	2 Hydraulic Excavator	1,956,085.00
P-243 to P-245	Marubeni Corporation	5 Wheel Loader	5,081,156.00
P-234	Volvo East Asia Pte Ltd	Wheel Loader	1,165,420.00
P-246 to 247	Volvo Truck Corporation	5 Dump Truck	4,434,851.00

[31] Exhibit "P-741".

P-252 to P-253	Volvo Do Brasil Veiculus	2 Volvo Motor Grade	906,021.00
P-249 to P-251	Volvo Truck Corporation	2 Volvo Dump Truck	1,745,961.00
P-258 to P-260	Volvo Truck Corporation	7 Volvo Dump Truck	6,243,744.00
P-264 to P-268	Volvo Truck Corporation	12 Volvo Dump Truck	10,577,393.00
P-261 to P-263	Volvo Truck Corporation	1 unit FMX 440 66R	900,712.00
P-270 to P-271	Volvo Truck Corporation	6 Volvo Dump Truck	5,754,733.00
	sub-total		***₱ 43,723,699.00***
Domestic Purchases of Capital Goods Exceeding ₱1 Million			
P-272	Toyota Cubao Inc	Toyota Hi Lux	147,857.14
P-273	Toyota Makati Inc	1 Toyota Hiace	134,464.29
	sub-total		***₱ 282,321.43***
	Total		**₱ 44,006,020.43**

Pursuant to Section 110 (A) of the NIRC of 1997, as amended, as implemented by Section 4.110-3 of RR No. 16-2005, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds P1 Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if aggregate acquisition cost does not exceed P1 Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

Records show that in 2013 the duly substantiated input VAT of ₱44,006,020.43 was subjected by petitioner to amortization, of which the amortized input VAT of ₱8,326,025.84 is the subject of the present claim, as shown below:

Description	**Date of Purchase**	**1st Quarter (P-33)**	**2nd Quarter (P-50)**	**3rd Quarter (P-65)**	**4th Quarter (P-81 to P-82)**	**Total**
Importation of Capital Goods Exceeding ₱1 Million						
7 Volvo Hyd Excavator	1/21/2013	₱ 309,851.44	₱ 309,851.44	₱ 309,851.44	₱ 309,851.44	₱ 1,239,405.76
2 Hydraulic Excavator	3/6/2013	40,751.77	122,255.31	122,255.31	122,255.31	407,517.70
5 Wheel Loader	3/6/2013	105,857.42	317,572.25	317,572.25	317,572.25	1,058,574.17
Wheel Loader	3/12/2013	24,279.58	72,838.75	72,838.75	72,838.75	447,135.27
5 Dump Truck	3/12/2013	92,392.73	277,178.19	277,178.19	277,178.19	719,587.86
2 Volvo Motor Grade	4/1/2013		56,626.31	56,626.31	56,626.31	169,878.93
2 Volvo Dump Truck	4/3/2013		109,122.56	109,122.56	109,122.56	327,367.68
7 Volvo Dump Truck	4/18/2013		390,234.00	390,234.00	390,234.00	1,170,702.00
12 Volvo Dump Truck	5/10/2013		440,724.71	661,087.06	661,087.06	1,762,898.83
1 unit FMX 440 66R	5/20/2013		37,529.67	56,294.50	56,294.50	150,118.67

6 Volvo Dump Truck	6/25/2013		119,890.27	359,670.81	359,670.81	839,231.89
sub-total		***₱ 573,132.94***	***₱2,253,823.46***	***₱2,732,731.18***	***₱2,732,731.18***	***₱8,292,418.76***
Domestic Purchases of Capital Goods Exceeding ₱1 Million						
Toyota Hi Lux	3/1/2013	₱ 2,464.29	₱ 7,392.86	₱ 7,392.86	₱ 7,392.86	₱ 24,642.87
1 Toyota Hiace	9/27/2013			2,241.07	6,723.21	8,964.28
sub-total		***₱ 2,464.29***	***₱ 7,392.86***	***₱ 9,633.93***	***₱ 14,116.07***	***₱ 33,607.15***
Total		**₱ 575,597.23**	**₱2,261,216.32**	**₱2,742,365.11**	**₱2,746,847.25**	**₱8,326,025.91**

**The ₱0.07 discrepancy with the amount claimed is due to rounding off.*

However, even if petitioner was able to substantiate its domestic purchases of capital goods exceeding ₱1 Million, the corresponding amortized input VAT of ₱33,607.15 is not allowable as input tax credit.

Pursuant to RMO No. 9-00, sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, prescribed under Section 3 of RMO No. 9-00:

> "**SECTION 3.** *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
>
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and

> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the present case, record shows that petitioner was issued a certification[32] by the BOI attesting to the fact that it is a BOI registered entity with 100% exports.

Under Section 3.4 of RMO 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner covering the period January 1, 2013 to December 31, 2013. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner. Thus, it follows that petitioner is not entitled to refund of input VAT from the said domestic purchases.

As held by the CTA *En Banc,* in the case of ***Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue,***[33] which affirmed the Decision of the Court in Division, petitioner's recourse is not against the government but against the seller who shifted to it the output VAT, to wit:

> "To allow petitioner a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enrich himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr' (Ong Yong, et. al. vs. David S. Tiu, et. al., 375 SCRA 640).* Said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.

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[32] Exhibit "P-16".
[33] CTA EB Case No. 403 (CTA Case No. 7022), May 29, 2009.

> In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT. *Revenue Memorandum Circular No. 42-03* is clearly instructive on this matter:
>
> > 'In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.'
>
> Pursuant to *Revenue Memorandum Circular No. 42-03*, petitioner's recourse for those purchases of goods and services where it paid VAT is not a claim for refund against the government, or the issuance of a tax credit certificate; but to seek reimbursement of the input VAT paid from its suppliers of goods and services."

The aforequoted ruling was affirmed by the Supreme Court in the case of ***Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue*, G.R. No. 190506**, on June 13, 2016 holding that the proper party to seek the tax refund or credit should be the suppliers, not the petitioner (Coral Bay)

Thus, only the amortized input VAT of ₱8,292,418.76 arising from importation of capital goods exceeding ₱1 Million represents petitioner's valid input VAT.

5th and 6th Requisites: The input taxes incurred or paid are attributable to zero-rated or effectively zero-rated sales; Petitioner has excess/unutilized input taxes.

Considering that petitioner is engaged in taxable sales subject to zero percent (0%) and twelve percent (12%) rates, as well as exempt sales, and its input VAT cannot be directly or entirely attributed to any of the transactions, we shall allocate the valid input VAT proportionately on the basis of the volume of its sales. Thus:

Period Covered 2013	Zero-Rated Sales (A)	VAT Sales (B)	Exempt Sales (C)	Total Sales [D=(A+B+C)]
1st qtr	₱ 214,783,070.68	₱ 1,203,144.32	₱ 31,778,264.72	₱ 247,764,479.72
2nd qtr	807,338,142.21	4,360,546.07	32,448,283.45	844,146,971.73
3rd qtr	1,222,268,124.41	35,809,985.97	33,762,661.08	1,291,840,771.46
4th qtr	1,029,392,683.76	291,714.29	33,778,588.24	1,063,462,986.29
Total	**₱ 3,273,782,021.06**	**₱ 41,665,390.65**	**₱131,767,797.49**	**₱ 3,447,215,209.20**

Substantiated Input VAT attributable to:	
Zero-Rated Sales (A/D x ₱8,292,418.76)	₱ 7,875,218.05
VAT Sales (B/D x ₱8,292,418.76)	100,227.82
Exempt Sales (C/D x ₱8,292,418.76)	316,972.89
Total	**₱ 8,292,418.76**

Since petitioner's input VAT allocated to VATable sales in the amount of ₱100,227.82 is not enough to cover its output VAT liability for the taxable year 2013 in the amount of ₱4,999,846.88, the substantiated input VAT attributable to zero-rated sales in the amount of ₱7,875,218.05 shall be utilized against the remaining output VAT of ₱4,899,619.06. Thus, only the remaining input VAT of ₱2,975,598.99 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱3,273,782,021.06 and only the input VAT of ₱2,863,631.56 is attributable to the valid zero-rated sales of ₱3,150,594,396.73, as computed below:

Output VAT		
1st Qtr	₱ 144,377.32	
2nd Qtr	523,265.53	
3rd Qtr	4,297,198.32	
4th Qtr	35,005.71	₱ 4,999,846.88
Less: Input VAT attributable to VAT Sales		100,227.82
Output VAT Still Due		**₱ 4,899,619.06**

Substantiated Input VAT Allocated to Zero-Rated Sales	₱ 7,875,218.05
Less: Output VAT still due	4,899,619.06
Excess Input Tax attributable to zero-rated sales	**₱ 2,975,598.99**
Divided by Declared Zero-Rated Sales	₱ 3,273,782,021.06
Multiply by Substantiated Zero-Rated Sales	₱ 3,150,594,396.73
Refundable Input VAT attributable to Zero-Rated Sales	**₱ 2,863,631.56**

Although the claimed input VAT was carried-over by petitioner in its Quarterly VAT Return for the first quarter of 2014[34], the same remained unutilized since it was deducted in the same Quarterly VAT Return, as "VAT Refund/TCC claimed"[35] from the total available input tax of ₱94,812,411.49[36]. Thus, the claimed input taxes for the taxable year 2013 could not have been carried-over/utilized in the succeeding second quarter of 2014.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund to petitioner the reduced amount of **₱2,863,631.56**, representing its excess/unutilized input VAT paid on its importation and domestic purchases of capital goods with aggregate acquisition cost exceeding ₱1 million, which are attributable to its zero-rated sales for taxable year 2013.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
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.
Associate Justice
Chairperson, Second Division

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[34] Exhibit "P-27".
[35] Exhibit "P-27", Line 23D.
[36] Exhibit "P-27", Line 22.

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