REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8697
Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:

SEP 0 1 2016
2:00 p.m.

x--x

DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

Before the Court is a Petition for Review filed by Phil. Gold Processing and Refining Corp. to seek the refund or issuance of tax credit certificate in its favor of its alleged unutilized creditable input value-added tax (VAT) in the aggregate amount of ₱53,540,003.27, covering the period of July 1, 2011 to December 31, 2011, broken down as follows:

AMOUNT OF CLAIM	PERIOD COVERED
₱25,183,423.00	July 1, 2011 to September 30, 2011
₱28,356,580.27	October 1, 2011 to December 31, 2011

STATEMENT OF FACTS

Petitioner Phil. Gold Processing and Refining Corp. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It was issued a Certificate of Incorporation on December 27, 2004 by the Securities and Exchange Commission (SEC) under its former name, LFT Processing Corporation.[1] Petitioner is registered with the Bureau of Internal Revenue (BIR), with Tax Identification No. 004-498-686-000 issued on March 15, 1996.[2]

Petitioner is principally engaged in the business of processing, milling, crushing, refining, smelting, and concentrating mineral resources. It is registered with the Board of Investment (BOI) as a "New Producer of Gold and Silver Dore on a Non-Pioneer Status with Pioneer Incentives being located in Less Developed Area (LDA)".[3]

Respondent Commissioner is the head of the BIR, vested with the power and authority, among others, to grant a refund of or to issue a tax credit certificate for unutilized input VAT attributable to zero-rated sales. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for the first[4] and second[5] quarters of fiscal year (FY) ending June 30, 2012 on October 24, 2011 and on January 25, 2012, respectively.

Subsequently, on March 19, 2013, petitioner filed its administrative claim for the issuance of tax credit certificate or tax refund covering the first and second quarters of FY ending June 30, 2012.[6]

On August 15, 2013, petitioner filed the instant Petition for Review with this Court, which was docketed as CTA Case No. 8697.[7]

Respondent filed his Answer[8] on October 24, 2013, interposing the following special and affirmative defenses: that respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses; that petitioner's claim for refund is still subject to

[1] Par. 1, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 1209.
[2] Par. 4, Summary of Stipulated Facts, JSFI, docket, p. 1210.
[3] Par. 3, Summary of Stipulated Facts, JSFI, docket, p. 1210; Exhibit "P-3".
[4] Exhibit "P-12".
[5] Exhibit "P-15".
[6] Exhibits "P-6" and "P-7".
[7] Docket, pp. 17-32.
[8] Docket, pp. 927-929.

investigation by the Bureau of Internal Revenue; that petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; that taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable; that it is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended; and that petitioner's claim for refund or issuance of tax credit certificate in the amount of Php25,183,423.00 and Php28,356580.27 as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 1st Quarter and 2nd Quarter of fiscal year ending June 2012 (or for the period July 1, 2011 to December 31, 2012) was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

The case was set for pre-trial conference on January 30, 2014.[9] Respondent filed her Pre-Trial Brief[10] on January 16, 2014. On the other hand, petitioner filed its Pre-Trial Brief[11] on January 20, 2014.

The parties filed their Joint Stipulation of Facts and Issues[12] on May 2, 2014. Subsequently, the Court issued a Pre-Trial Order[13] on May 19, 2014.

During trial, petitioner presented Juanita Lilet A. Dato-Abuel and Enrico T. Pizarro as its witnesses.

Petitioner filed its Formal Offer of Evidence[14] on December 1, 2014. On January 21, 2015, the Court issued a Resolution[15] on petitioner's Formal Offer of Evidence

On February 6, 2015, petitioner filed a Motion for Partial Reconsideration[16] of the Resolution dated January 21, 2015.

In the Resolution promulgated on April 20, 2015, the Court ordered petitioner to file a Supplemental Formal Offer of Evidence, and to submit the Amended Judicial Affidavit of Enrico T. Pizarro that incorporates the necessary correction in the formal offer and identification of petitioner's exhibits. Further, the Court resolved to defer the resolution of the motion for partial reconsideration filed by petitioner.[17]

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[9] Notice of Pre-Trial Conference, docket, p. 932.
[10] Docket, pp. 938-940.
[11] Docket, pp. 947-954.
[12] Docket, pp. 1209-1212.
[13] Docket, pp. 1240-1245.
[14] Docket, pp. 1373-1450.
[15] Docket, pp. 1513-1515.
[16] Docket, pp. 1517-1526.
[17] Docket, pp. 1573-1576.

On May 25, 2015, petitioner filed a Motion to Admit Attached Amended Judicial Affidavit and Supplemental Formal Offer of Evidence.[18]

In the Resolution promulgated on June 30, 2015, the Court granted petitioner's motion for partial reconsideration, and accordingly admitted, as evidence for petitioner the denied exhibits.

During the hearing held on August 10, 2015, the counsel for respondent manifested in open court that she has no evidence to present.[19]

The Records Verification Report of the Judicial Records Division[20] of this Court dated September 22, 2015 states that respondent failed to file his Memorandum. On the other hand, petitioner filed its Memorandum[21] on September 23, 2015.

In the Resolution[22] dated October 6, 2015, the case was declared submitted for Decision.

STATEMENT OF ISSUES

The parties submitted the following issues[23] for this Court's consideration:

1. Whether or not petitioner is entitled to recover by way of refund and/or issuance of tax credit certificate its unutilized creditable input taxes for the first and second quarters of the fiscal year ending June 30, 2012 in the amounts of ₱25,183,423.00 and ₱28,356,580.27;

2. Whether for the first and second quarters of fiscal year ending June 30, 2012 (or from July 1, 2011 to December 31, 2011), petitioner rendered services in the Philippines to persons engaged in business conducted outside of the Philippines, the payments for which were paid for in acceptable foreign currency and accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas*;

[18] Docket, pp. 1587-1657.
[19] Minutes of Hearing dated August 10, 2015, docket, p. 1666.
[20] Docket, p. 1675.
[21] Docket, pp. 1676-1698.
[22] Resolution dated October 6, 2015, docket, p. 1701.
[23] JSFI, docket, pp. 1210-1211.

3. Whether petitioner's sale of services in the Philippines to persons engaged in business conducted outside of the Philippines is subject to VAT at zero-percent;

4. Whether petitioner has accumulated excess input VAT for the first quarter of fiscal year ending June 30, 2012 amounting to ₱25,183,423.00 and for the second quarter of fiscal year ending June 30, 2012 amounting to ₱28,356,580.27;

5. Whether petitioner's alleged input VAT for the first quarter of fiscal year ending June 30, 2012 amounting to ₱25,183,423.00 and for the second quarter of fiscal year ending June 30, 2012 amounting to ₱28,356,580.27 are directly attributable to its alleged zero-rated sales;

6. Whether petitioner's input VAT for the first quarter of fiscal year ending June 30, 2012 amounting to ₱25,183,423.00 and for the second quarter of fiscal year ending June 30, 2012 amounting to ₱28,356,580.27 remain unutilized;

7. Whether petitioner's claims for refund or tax credit of alleged input VAT for the first and second quarters of fiscal year ending June 30, 2012 are duly substantiated by documentary evidence; and

8. Whether petitioner has complied with the invoicing requirements pursuant to Revenue Regulations (RR) 16-2005.

The above-enumerated issues can be summarized as follows:

"Whether or not petitioner is entitled to refund or issuance of tax credit certificate in the aggregate amount of Fifty-Three Million Five Hundred Forty Thousand Three Pesos and 27/100 (₱53,540,003.27), allegedly representing its unutilized creditable input VAT for the period of July 1, 2011 to December 31, 2011."

RULINGS OF THE COURT

Section 112(A) of the National Internal Revenue Code (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: *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."

Pursuant to the above-quoted provision and as laid down by the Supreme Court in a number of cases[24], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund or tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

> 1. the taxpayer must be VAT-registered;
> 2. the taxpayer must be engaged in zero-rated or effectively zero-rated sales;
> 3. the input tax due or paid must be attributable to such sales, except the transitional input VAT, to the extent that such input VAT has not been applied against any output VAT liability; and
> 4. the claim must be filed within the prescribed period both in the administrative and judicial levels.

[24] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 and 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

The Court finds it appropriate to resolve first the issue pertaining to the timeliness of the filing of petitioner's claim for refund prior to resolving the other requisites to determine whether this Court has acquired the proper jurisdiction over the case.

Petitioner timely filed its claim

Pursuant to Section 112(A) of the NIRC of 1997, as amended, petitioner has two years to file a claim for refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when the sales were made.[25]

As shown in the table below, petitioner has until September 30, 2013 and December 31, 2013, respectively, within which to file the administrative claim covering the first and second quarters of FY ending June 30, 2012, pursuant to Section 112(A) of the NIRC of 1997, as amended, thus:

Period Covered	Close of Taxable Quarter	End of 2-year Period to File Administrative Claim
July 2011		
August 2011		
September 2011	September 30, 2011	September 30, 2013
October 2011		
November 2011		
December 2011	December 31, 2011	December 31, 2013

Petitioner filed the two Applications for Tax Credits/Refunds (BIR Form No. 1914)[26] with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF-OSSC" for brevity) on March 19, 2013, both of which fell within the prescriptive period provided for by law.

Section 112(C) of the NIRC of 1997, as amended, reads:

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

xxx xxx xxx

[25] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.),* G.R. No. 172129, September 12, 2008.
[26] Exhibits "P-41" and "P-42".

> (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 relation to the afore-quoted provision, in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[27], the Supreme Court ruled:

> "Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.
>
> Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit - or actually submitted - additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed."

Counting 120 days from March 19, 2013, the date when petitioner is deemed to have completed the submission of its supporting documents to respondent, the latter has until July 17, 2013 within which to act upon petitioner's administrative claim. Counting 30 days from July 17, 2013, petitioner has until August 16, 2013 within which to appeal its claim for refund or issuance of tax credit certificate before this Court.

The instant Petition for Review was filed on August 15, 2013.

[27] G.R. No. 182737, March 2, 2016.

From the foregoing, this Court finds that the instant petition was filed within the prescriptive periods provided by law.

Whether the petitioner's sales are subject to VAT at zero percent (0%)

Records show that petitioner is a VAT-registered taxpayer[28], principally engaged in the business of processing, milling, crushing, refining, smelting, and concentrating mineral resources.[29] Petitioner is registered with the Board of Investment as a "New Producer of Gold and Silver Dore on a Non-Pioneer Status with Pioneer Incentives being located in Less Developed Area".[30]

Petitioner avers that it exports 100% of its processed gold and silver dore, which are paid for in acceptable foreign currency duly accounted for based on the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP). Thus, petitioner posits that such export sales are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

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

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[28] Pars. 4 and 5, Summary of Stipulated Facts, JSFI, docket, p. 1210; Exhibit "P-5".
[29] Par. 1, Summary of Stipulated Facts, JSFI, docket, p. 1209; Exhibit "P-2".
[30] Par. 3, Summary of Stipulated Facts, JSFI, docket, p. 1210; Exhibits "P-40", "P-3", and "P-4".

In order for an export sale to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following requisites 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 or services; and
4. that the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary to the first requisite, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended, provide that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties issue a VAT invoice which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> (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

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(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" *(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:

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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)*

Aside from the above-stated requirements, the invoice or receipt must be duly registered with the BIR as prescribed in 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 and 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" *(Emphasis supplied)*

> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Pursuant to 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 No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1. Sales Invoice as proof of sale of goods;

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2. Export Declaration and Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods 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. 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 its Quarterly VAT Returns for the first and second quarters of FY ending June 30, 2012, petitioner reported the following zero-rated sales in the amount of ₱2,421,811,551.13:

EXHIBIT	TAXABLE QUARTER (FY ENDING JUNE 30, 2012)		ZERO-RATED SALES
P-12	1st Quarter	July 1, 2011 to September 30, 2011	₱ 696,009,307.85
P-15	2nd Quarter	October 1, 2011 to December 31, 2011	1,725,802,243.28
TOTAL			**₱2,421,811,551.13**

Based on the supporting VAT zero-rated sales invoices[31], the reported amount of ₱2,421,811,551.13 was derived by petitioner from sales to the following entities as summarized by the Court-commissioned Independent Certified Public Accountant (CPA) in the Report dated April 13, 2014:[32]

Date	Sales Invoice No.	Customer Name	Amount		Exhibit
			In US Dollars	In Philippine Peso	
First Quarter of FY 2012					
31-Jul-11	0082	Standard Chartered PLC	$ 1,472,748.00	₱ 62,937,051.39	P-8.1
31-Jul-11	0083	West LB AG	1,323,632.61	56,564,689.68	P-8.2
31-Jul-11	0084	BNP Paribas Bank	1,291,478.80	55,190,614.83	P-8.3
31-Aug-11	0085	Standard Chartered PLC	2,266,916.97	96,875,412.39	P-8.4
31-Aug-11	0086	Metalor Technologies SA	3,110,288.42	132,916,413.49	P-8.5
31-Aug-11	0087	West LB AG	1,430,399.39	61,127,307.54	P-8.6

[31] Exhibits "P-8.1" to "P-8.22".
[32] Exhibit "P-60", Results of Procedures Performed, item 1.a; Exhibit "P-8".

31-Aug-11	0088	BNP Paribas Bank	1,296,265.20	55,395,158.92	P-8.7
30-Sep-11	0089	Standard Chartered PLC	1,457,451.37	62,283,358.58	P-8.8
30-Sep-11	0090	West LB AG	1,334,932.35	57,047,577.67	P-8.9
30-Sep-11	0091	BNP Paribas Bank	1,302,736.90	55,671,723.35	P-8.10
Subtotal			**$16,286,850.01**	**₱ 696,009,307.85**	
Second Quarter of FY 2012					
31-Oct-11	0092	Standard Chartered PLC	$ 1,778,785.67	₱ 77,546,096.68	P-8.11
31-Oct-11	0093	Metalor Technologies SA	4,093,061.60	178,436,871.80	P-8.12
31-Oct-11	0094	West LB AG	1,337,991.80	58,329,703.93	P-8.13
31-Oct-11	0095	BNP Paribas Bank	1,305,838.00	56,927,960.18	P-8.14
30-Nov-11	0096	Standard Chartered PLC	1,815,414.43	79,142,926.14	P-8.15
30-Nov-11	0097	Metalor Technologies SA	6,713,600.00	292,679,148.17	P-8.16
30-Nov-11	0098	West LB AG	1,342,778.20	58,538,366.86	P-8.17
30-Nov-11	0099	BNP Paribas Bank	1,310,624.40	57,136,623.12	P-8.18
31-Dec-11	0100	Standard Chartered PLC	1,728,073.10	75,335,284.03	P-8.19
31-Dec-11	0101	Metalor Technologies SA	24,369.04	1,062,367.41	P-8.20
31-Dec-11	0102	West LB AG	1,351,055.70	58,899,224.17	P-8.21
31-Dec-11	0103	BNP Paribas Bank	16,785,601.11	731,767,670.77	P-8.22
Subtotal			**$39,587,193.05**	**₱1,725,802,243.28**	
Total			**$55,874,043.06**	**₱2,421,811,551.13**	

To prove that its reported sales of ₱2,421,811,551.13 were paid for in US$55,874,043.06, petitioner presented VAT zero-rated official receipts[33], Certification of inward remittances issued by the Hongkong and Shanghai Banking Corporation Limited (HSBC),[34] and the Consolidated Cash Statement[35] from BNP Paribas Corporate and Investment Banking.

An examination of the said documents together with the reconciliation schedule[36] prepared by the Independent CPA reveals that out of the reported sales of petitioner in the total amount of US$55,874,043.06, the amount of US$141,345.85 does not have the corresponding inward remittances, detailed as follows:

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[33] Exhibits "P-9.1" to "P-9.46."
[34] Exhibit "P-55".
[35] Exhibit "P-26".
[36] *Ibid.*

Sales Invoice No.	Customer Name	Amount per Invoice in US$	Official Receipts				Difference
			Amount in US$	O.R. No.	Exhibit	Inward Remittance (Exhibit P-26)	
First Quarter of FY 2012							
0082	Standard Chartered PLC	1,472,748.00	733,689.70	0188	P-9.4	Page 6	34,914.60
			704,143.70	0189	P-9.5	Page 6	
0083	West LB AG	1,323,632.61	674,952.60	0185	P-9.1	Page 4	14.01
			648,666.00	0186	P-9.2	Page 5	
0084	BNP Paribas Bank	1,291,478.80	1,291,471.80	0187	P-9.3	Page 6	7.00
0085	Standard Chartered PLC	2,266,916.97	798,190.19	0191	P-9.7	Page 6	25,505.58
			706,837.60	0196	P-9.12	Page 8	
			736,383.60	0199	P-9.15	Page 8	
0086	Metalor Technologies SA	3,110,288.42	2,939,245.41	0190	P-9.6	Page 6	7.00
			171,036.01	0193	P-9.9	Page 6	
0087	West LB AG	1,430,399.39	101,980.39	0192	P-9.8		14.00
			651,059.20	0194	P-9.10	Page 7	
			677,345.80	0195	P-9.11	Page 7	
0088	BNP Paribas Bank	1,296,265.20	1,296,258.20	0198	P-9.14	Page 8	7.00
0089	Standard Chartered PLC	1,457,451.37	739,077.50	0202	P-9.18	Page 10	8,842.37
			709,531.50	0203	P-9.19	Page 10	
0090	West LB AG	1,334,932.35	654,298.85	0200	P-9.16	Page 9	14.00
			680,619.50	0201	P-9.17	Page 9	
0091	BNP Paribas Bank	1,302,736.90	1,302,729.90	0204	P-9.20	Page 10	7.00
Subtotal		**16,286,850.01**	**16,217,517.45**				
Second Quarter of FY 2012							
0092	Standard Chartered PLC	1,778,785.67	305,116.70	0205	P-9.21	Page 10	19,672.17
			712,225.40	0210	P-9.26	Page 12	
			741,771.40	0211	P-9.27	Page 12	
0093	Metalor Technologies SA	4,093,061.60	4,093,054.60	0206	P-9.22	Page 10	7.00
0094	West LB AG	1,337,991.80	655,845.60	0207	P-9.23	Page 11	14.00
			682,132.20	0208	P-9.24	Page 11	
0095	BNP Paribas Bank	1,305,838.00	1,305,831.00	0209	P-9.25	Page 12	7.00
0096	Standard Chartered PLC	1,815,414.43	182,573.00	0213	P-9.29	Page 12	27,873.83
			145,569.00	0214	P-9.30	Page 13	
			744,472.30	0219	P-9.35	Page 14	
			714,926.30	0220	P-9.36	Page 14	
0097	Metalor Technologies SA	6,713,600.00	4,342,283.00	0212	P-9.28	Page 12	(16.00)
			2,371,333.00	0215	P-9.31	Page 13	
0098	West LB AG	1,342,778.20	658,238.00	0216	P-9.32	Page 13	14.80
			684,525.40	0217	P-9.33	Page 13	
0099	BNP Paribas Bank	1,310,624.40	1,310,617.40	0218	P-9.34	Page 14	7.00
0100	Standard Chartered PLC	1,728,073.10	86,277.80	0222	P-9.38	Page 14	28.00
			176,994.90	0224	P-9.40	Page 15	
			747,159.20	0229	P-9.45	Page 16	
			717,613.20	0230	P-9.46	Page 16	
0101	Metalor Technologies SA	24,369.04	-	-	-	-	24,369.04
0102	West LB AG	1,351,055.70	688,698.20	0226	P-9.42	Page 15	14.00

			662,343.50	0227	P-9.43	Page 15	
0103	BNP Paribas Bank	16,785,601.11	6,260,741.00	0221	P-9.37	Page 14	22.45
			3,678,594.96	0223	P-9.39	Page 15	
			5,527,431.10	0225	P-9.41	Page 15	
			1,318,811.60	0228	P-9.44	Page 16	
Subtotal		**39,587,193.05**	**39,515,179.76**				
Total		**55,874,043.06**	**55,732,697.21**				**₱141,345.85**

The Independent CPA explained that the difference was due to bank fees, transport charges, and refining costs which were automatically deducted by petitioner's customers.[37] However, other than the bank fees of US$7.00 which were clearly indicated in the zero-rated official receipts, petitioner did not provide for other documents to prove that the remaining amounts were indeed charges automatically deducted by petitioner's customers.

While petitioner submitted before the Court the VAT zero-rated sales invoices[38], official receipts[39], HSBC Certification[40], and the Consolidated Cash Statement[41] from BNP Paribas Corporate and Investment Banking, these pieces of evidence do not fully substantiate its alleged export sales for the first and second quarters of fiscal year ending June 30, 2012. The failure of petitioner to submit its export documents, such as its export declarations and the corresponding bill of lading or airway bill relative to the exportation, is fatal to its claim for refund or issuance of tax credit certificate. It is for this reason that petitioner's alleged export sales for the said periods in the aggregate amount of ₱2,421,811,551.13 cannot qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. As a consequence, the alleged input VAT attributable thereto in the aggregate sum of ₱53,540,003.27 cannot be refunded.

Petitioner contends that Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, does not specifically require the submission of export declarations, bills of ladings and airway bills just to prove the sale and actual shipment of the produced gold and silver dore to the buyers in foreign countries; and that the actual shipment of the goods from the Philippines to the foreign country is clearly and manifestly shown and established by the actual payments made by the buyers in their foreign countries duly accounted for based on the rules and regulations of the BSP, as evidenced by the Certification issued by HSBC.

The Court finds petitioner's argument unmeritorious.

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[37] Exhibit "P-60," Results of Procedures Performed, item 1.a.
[38] Exhibits "P-8.1" to "P-8.22".
[39] Exhibits "P-9.1" to "P-9.46".
[40] Exhibit "P-55".
[41] Exhibit "P-26".

In a similar case involving the same parties,[42] the Court of Tax Appeals *En Banc* denied petitioner's refund claim for its failure to submit VAT zero-rated invoices and export documents. Premised upon the ruling of the Supreme Court in *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[43], the Court of Tax Appeals *En Banc* made the following pronouncements:

> "Evidently, export sales are determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported and that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents. In the case of Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, the Supreme Court had occasion to rule on the documentary evidences to prove export sales, to wit:
>
> > *'In this connection, petitioner,* ***in order to prove that it was engaged in export sales during the second quarter of 1998, offered in evidence copies of summary of export sales, sales invoices, official receipts, airway bills, export declarations and certification of inward remittances during the said period.*** *In addition, petitioners Certificate of Registration with RDO Control No. 96-540-000713 issued by the BIR and Certificate of Registration No. 95-133 issued by the PEZA were likewise offered in evidence to prove that it is a VAT-registered entity as well as an Ecozone export enterprise.*
> >
> > ***To the mind of the Court, these documentary evidence submitted by petitioner, e.g., summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the sale and actual shipment of goods from the Philippines to a foreign country. In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity.*** *Moreover, the certification of inward remittances attests to the fact of payment in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP. xxx' (Emphasis supplied)"*

[42] CTA EB No. 1192, January 4, 2016.
[43] G.R. No. 166732, April 27, 2007.

The sales invoices, official receipts, HSBC Certification, and the Consolidated Cash Statement coming from BNP Paribas Corporate and Investment Banking presented by petitioner only established the fact of sale of goods and the receipt of the corresponding foreign currency remittances. The said pieces of evidence do not reveal the actual shipment of goods from the Philippines to a foreign country. Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, mandates that the goods be physically shipped out of the Philippines to a foreign country, which can be proven through the presentation of corresponding export declarations, and bills of lading or airway bills. Thus, petitioner's non-presentation of the said export documents will warrant the dismissal of its claim for refund or issuance of tax credit certificate.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[44] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[45] In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.[46]

In fine, for failure of petitioner to sufficiently establish the fact of actual shipment of its goods from the Philippines to a foreign country, the denial of the refund claim is in order.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[44] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005.

[45] *National Power Corporation vs. Province of Isabela,* G.R. No. 165827, June 16, 2006, citing *Cyanamid Philippines, Inc. vs. Court of Appeals,* 379 Phil. 689, 703 (2000).

[46] *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 181136, June 13, 2012.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice