

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TAGANITO MINING CORPORATION,
Petitioner,

CTA CASE NO. **7769**

Members:

-versus-

CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, J.J.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

APR 08 2010

X-----X
8:45 a.m.

DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review with a Supplemental Petition for Review filed by Taganito Mining Corporation as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 4(a), Rule 8, in relation to Rule 4, 2005 Revised Rules of the Court of Tax Appeals, as amended.

Petitioner claims for refund in the amount of P22,421,260.26, allegedly representing unutilized input value-added tax (VAT) on importation/domestic purchases of capital goods and non-capital goods and services attributable to zero-rated sales for the period covering January 1, 2006 to December 31, 2006. 6

The claimed amount was reduced to P4,611,123.00, after petitioner filed a Supplemental Petition for Review to reflect the reduction of the refundable input VAT after respondent partially granted petitioner's administrative claim for refund or issuance of tax credit certificate.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 4th Floor, Solid Mills (now BMMC) Building, Dela Rosa Street, Legaspi Village, Makati City. It is duly registered with the Securities and Exchange Commission (SEC), as evidenced by Certificate of Registration No. 138682 issued on March 4, 1987. It is primarily engaged in the business of exploring, extracting, mining, selling, and exporting precious metals and all kinds of ores, metals, and their by-products. It is a VAT-registered entity with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494 and a Board of Investments (BOI)-registered entity with BOI Certificate of Registration No. EP 88-306 dated April 14, 1988.¹

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to exercise the functions of said office, including *inter alia*, the power to decide claims for refund of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

¹ Pars. 1-4, Stipulated Facts, Joint Stipulation of Facts and Simplification of Issues, Docket, pp. 51-52 <

Petitioner filed through the BIR's computerized filing system (EFPS) its Original Quarterly VAT Returns for the first to fourth quarters of 2006 on the following dates:

Exhibit	Taxable Quarter	Date of Filing
"X" to "X-3"	First	April 24, 2006
"Z" to "Z-3"	Second	July 19, 2006
"AA" to "AA-5"	Third	October 18, 2006
"CC" to "CC-2"	Fourth	January 25, 2007

Subsequently, petitioner filed its Amended Quarterly VAT Returns on October 18, 2006² for the first and second quarters of 2006, and on March 25, 2008³ for the fourth quarter of 2006.

On March 26, 2008, petitioner filed with respondent, through the latter's Excise Taxpayers' Assistance Division under the Large Taxpayers Division or LTAID-II, a claim for credit/refund of input VAT paid on its domestic purchases of taxable goods and services and importation of goods amounting to P22,421,260.26, for the period covering January 1, 2006 to December 31, 2006.⁴

Since respondent has not issued a final decision on petitioner's administrative claim, petitioner filed the instant Petition for Review on April 17, 2008, in order to toll the running of the two-year period to judicially claim a tax refund/credit as provided in Section 229 of the NIRC of 1997.

² Exhibits "W" to "W-5" and "Y" to "Y-5"

³ Exhibits "BB" to "BB-3"

⁴ Exhibit "FF" 

Respondent, in his Answer⁵ filed on June 4, 2008, interposed the following Special and Affirmative Defenses:

- "6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.
7. A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most categorical language. These claims are construed strictly against the petitioner and liberally in favor of the taxing authority. (Commissioner of Internal Revenue V. Manila Mining Corp., 468 SCRA 571). This being so, the claim for refund of excess VAT input taxes in the amount of Php22,421,260.26 for CY 2006 must be strictly construed and petitioner has the burden of proving that the following requirements were met or complied with:
 - a. The registration requirements of a value-added taxpayer in compliance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, and Section 236 of the NIRC of 1997, as amended;
 - b. The invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the NIRC of 1997, as amended;
 - c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, Revenue Memorandum Order No. 53-98. Otherwise, there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the NIRC of 1997, as amended. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above stated requirements warrants the dismissal of the petition for review; and

⁵ Docket, pp. 27-31 

d. That petitioner's administrative and judicial claims for tax refund was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the NIRC of 1997, as amended.

8. Petitioner failed to show proof of compliance with the above requirements. Hence, the petition should be denied.
9. Moreover, petitioner did not give respondent ample time to resolve its administrative claim for refund based on Section 112 (C) of the NIRC of 1997, which states:

'Section 112. Refunds or Tax Credits of Input Tax-

(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.' (Italics ours)

10. Hence, when petitioner filed its administrative claim for tax refund with respondent's Excise Taxpayers' Assistance Division on 26 March 2008, respondent had 120 days within which to decide on petitioner's claim for tax refund. And in case of full or partial denial of the claim or failure of respondent to act on the application within the 120 day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 26 March 2008 or until 22 July 2008. In the event that respondent failed to act upon petitioner's claim for tax refund, petitioner has 30 days from 22 July 2008 or until 21 August 2008 to appeal the unacted claim with the Court of Tax Appeals.
11. The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (Agpalo, Statutory Construction, Third Edition 

1995, pa. 266). For this reason, the courts construe these provisions of statutes as mandatory (*Ibid.*, citing *Alvero vs. De La Rosa*, 76 Phil. 428, 434).

12. Petitioner filed the instant petition for review with the Court of Tax Appeals only on 26 March 2008. Clearly, the instant petition for review was filed prematurely. The period provided by Section 112(c) of the NIRC of 1997 gives respondent the opportunity to act on administrative claims for refund. Petitioner denied this opportunity to respondent. Also, it recognizes the fact that our courts' dockets, in this case the Honorable Court of Tax Appeals, are clogged with cases. Hence, indiscriminate filing of judicial claims for tax refund, like the instant petition, is not favorable to this Honorable Court.
13. 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 tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. V. Llanes*, 49 Phil. 466).
14. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law and the rules and regulations, and the burden to prove otherwise is upon the petitioner.
15. Based on the foregoing, the petitioner's claim for tax refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of cause of action and jurisdiction."

During trial, petitioner presented its witnesses Mr. Joseph Cedric V. Calica of AMC & Associates⁶, the Court's duly appointed Independent Certified Public Accountant⁷, and Mr. Reynaldo R. Vigilia, Vice President for Finance of petitioner⁸.

⁶ Docket, p. 182; TSN dated January 13, 2009

⁷ TSN dated October 2, 2008, page 11

⁸ Docket, pp. 95 and 118; TSN dated October 2, 2008 and November 24, 2008 

On March 17, 2009, petitioner filed a Motion for Partial Withdrawal of Petition⁹, to the extent of P17,810,137.26, in view of the approval by the BIR's Large Taxpayers Service-Excise Tax Division of the application for tax credit/refund of petitioner in the amount of P15,725,188.58 and the allowance of the previously disallowed amount of P2,084,948.68. This Court, in a Resolution¹⁰ dated April 8, 2009, granted the said Motion. Petitioner was ordered to file its Supplemental Petition for Review; limiting the issue of this case to the remaining amount of P4,611,123.00, representing petitioner's alleged excess input VAT paid on the importation of capital goods from January 1, 2006 to December 31, 2006.

On April 13, 2009, petitioner filed its Formal Offer of Evidence¹¹, offering Exhibits "A" to "SS-1", inclusive of submarkings; which this Court admitted in a Resolution¹² dated June 4, 2009.

Respondent, on his part, submitted this case for decision without presenting any evidence.¹³

On May 26, 2009, petitioner filed its Supplemental Petition for Review¹⁴, which now reduced the amount of its claim for tax refund from the original claim of P22,421,260.26 to P4,611,123.00; representing petitioner's alleged excess input VAT paid on the importation of capital goods from January 1, 2006 to December 31, 2006.

⁹ Docket, pp. 196-199

¹⁰ Docket, p. 204

¹¹ Docket, pp. 205-215

¹² Docket, pp. 515-516

¹³ Resolution dated November 13, 2009, Docket p. 537; TSN dated November 10, 2009, p. 5

¹⁴ Docket, pp. 507-510 

In his Supplemental Answer¹⁵ filed on June 25, 2009, respondent repleaded all the Special and Affirmative Defenses enumerated in his Answer filed on June 4, 2008, and added the following:

"6. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation."

On January 26, 2010, this case was submitted for decision, considering petitioner's Memorandum filed on January 7, 2010, and the report of this Court's Records Division that respondent failed to file a memorandum.¹⁶

Considering petitioner's Supplemental Petition for Review, the sole issue to be resolved is - "Whether or not petitioner is entitled to the refund of the amount of P4,611,123.00, allegedly representing petitioner's unutilized input VAT paid on its importation of capital goods for taxable year 2006."

Section 112(A) of the NIRC of 1997, as amended, lays down the requisites for claims for issuance of tax credit certificate or refund of input tax attributable to zero-rated or effectively zero-rated sales, to wit:

"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):

¹⁵ Docket, pp. 522-525

¹⁶ Resolution dated January 26, 2010, Docket, p. 554 

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.

Based on the foregoing, petitioner must comply with the following requisites to be entitled to a refund:

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

The two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales is counted from the date of filing of the return and payment of the tax due, as held in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue¹⁷. In the said case, the Supreme Court explained the foregoing rule in this wise:

“Lastly, although the taxpayer’s refundable or creditable input VAT may not be considered as illegally or erroneously collected, its refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit of illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim.

¹⁷ G.R. Nos. 141104 and 148763, June 8, 2007 

For the foregoing reasons, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter. xxx" (*Emphasis supplied*)

Petitioner's Schedule of 2006 Import Transactions¹⁸ reveals that petitioner's input VAT claim of P4,611,123.00 pertains to importation of capital goods for the months of January and February 2006, to wit:

Exhibit	Month	Amount of Taxable Imports	Amount of VAT
"KK"	January	P 11,314,310.00	P 1,131,431.00
"KK-1"	February	28,997,433.33	3,479,692.00
			P 4,611,123.00

Since the present claim involves petitioner's alleged unutilized input VAT on its importation of capital goods for the first quarter of 2006, the two-year prescriptive period must be reckoned from April 24, 2006¹⁹, when petitioner filed its Original Quarterly VAT Return for the first quarter of 2006. Consequently, petitioner had until April 24, 2008, within which to file its claim for refund, both in the administrative and the judicial levels. Clearly, petitioner's administrative claim for refund²⁰ filed on March 26, 2008 and the judicial claim for refund filed on April 17, 2008, were filed within the two-year prescriptive period.

On petitioner's compliance with the other requisites, a careful evaluation of petitioner's Schedule of Purchases and Corresponding Input VAT²¹, attached to the Report of the Court-commissioned Independent Certified Public

¹⁸ Docket, pp. 411-412

¹⁹ Exhibits "X" to "X-3"

²⁰ Exhibit "FF"

²¹ Exhibits "RR", Independent CPA Report; "RR-A-1-A" (for the month of January), Docket, p. 451 and "RR-A-1-A" (for the month of February), Docket, p. 453 

Accountant (CPA)²², indicates that the claimed amount of P4,611,123.00 is supported by official receipts with the following details:

Month	Exhibit No.	OR No.	OR Date	Net Amount	Input
January	"RR-A-1-A-3-A"	0028847	01/12/06	P 11,314,310.00	P 1,131,431.00
February	"RR-A-1-A-90-A"	014371	02/27/06	28,997,433.33	3,479,692.00
Total					P 4,611,123.00

This Court finds however that the supporting official receipts do not prove petitioner's actual payment of the claimed input VAT in the amount of P4,611,123.00. Also, there is no year indicated in the official receipt supporting the January 2006 claim of P1,131,431.00. Hence, the input VAT claim of P4,611,123.00 should be denied for failure to meet the substantiation requirements under Section 4.110-8(a)(1) of Revenue Regulations No. 16-05, which reads:

"SECTION 4.110-8. Substantiation of Input Tax Credits. -

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

- (1) **For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.** *(Emphasis supplied)*

Further, Sections 4.110-3 and 4.113-3 of Revenue Regulations No. 16-05, as amended by Revenue Regulations No. 4-2007, provide as follows:

²² Mr. Joseph Cedric V. Calica, Partner of AMC & Associates 

"SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* - Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of a capital good. The claim for input tax credit shall commence in the month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00."

"SECTION 4.113-3. *Accounting Requirements.* - Notwithstanding the provisions of Sec. 233, all persons subject to VAT under Sec. 106 and 108 of the Tax Code shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which every sale or purchase on any given day is

recorded. The subsidiary journal shall contain such information as may be required by the Commissioner of Internal Revenue:

A subsidiary record in ledger form shall be maintained for the acquisition, purchase or importation of depreciable assets or capital goods which shall contain, among others, information on the total input tax thereon as well as the monthly input tax claimed in VAT declaration or return.” (*Emphasis supplied*)

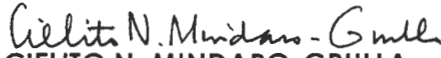
Applying the foregoing, petitioner failed to prove that the importations pertaining to the input VAT claim of P4,611,123.00 are in the nature of “capital goods or properties” as defined under Section 4.110-3(b) of Revenue Regulations No. 16-05. Assuming *arguendo* that the subject importations qualify as capital goods or properties, the related input VAT of P4,611,123.00 shall be spread/amortized over the estimated useful life of the capital goods or properties, which will mean that the same amount would not be entirely refundable. Since there was no evidence presented for this purpose, petitioner's claim for refund must fail.

It is a well settled rule that a taxpayer claimant, like herein petitioner, has the burden of proof to show that it is entitled to the refund of the amount claimed, considering that taxes are presumed to have been collected in accordance with laws and regulations. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a refund.²³ For failure of petitioner to establish the factual basis of its claim for refund, this Court has to deny the claim.

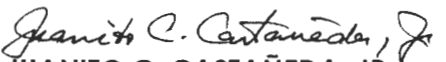
²³ *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 336 (

WHEREFORE, the instant Petition for Review and the Supplemental Petition for Review are hereby **DENIED** for lack of merit.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

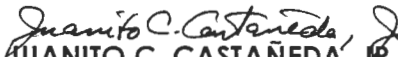
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

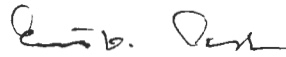
ATTESTATION

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

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 En Banc.


ERNESTO D. ACOSTA
Presiding Justice