REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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FILMINERA RESOURCES CORPORATION, Petitioner,	**CTA Case Nos. 8690 and 8716**
	Members:
- versus -	**DEL ROSARIO, P.J., UY, and MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 24 2016, 2:09 pm.

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RESOLUTION

UY, J.:

For resolution is petitioner's ***"Motion for Reconsideration [of the Decision dated 22 January 2016]"* filed** on February 05, 2016, together with respondent's ***"Comment/Opposition (Re: Motion for Reconsideration of the Decision dated 22 January 2016)"*** filed on February 29, 2016. In the Resolution dated March 14, 2016, petitioner's motion was submitted for resolution.

Hence, this Resolution.

In the instant Motion for Reconsideration, petitioner prays for the reconsideration of the Decision dated January 22, 2016 wherein it was ruled that this Court cannot determine whether or not the amounts being claimed form part of the "Total Allowable Input Tax" in the amount of ₱56,299,762.04, thereby it cannot definitely say that the Input VAT being claimed in the consolidated cases, or part thereof, were not applied against output taxes during and in the succeeding quarters.

Petitioner seeks the indulgence of this Court to revisit its findings stating that it cannot determine whether the amounts claimed were applied against output taxes during and in the succeeding quarters, which pertains to the last and tenth jurisprudentially formulated requisite outlined by the Court in the assailed Decision dated January 22, 2016.

According to petitioner, time and again, the Honorable Court shall be properly guided by the principle that "Substantial justice dictates that the government should not keep money that does not belong to it at the expense of citizens."[1] Allegedly, it is doctrinally entrenched that a refund may be granted since petitioner had not used the creditable amount or carried over to succeeding taxable quarters. In fact, the Court allegedly ruled that petitioner substantially complied with the requirements for a claim for refund under Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997 (nine out of ten requisites) except for proof that the claimed input taxes were not applied against any output liability during and in the succeeding period of claim.

Specifically, petitioner points out that this Court might have failed to consider that, as shown in the BIR Form No. 2550Q for the first quarter of 2012 (for the period July 1, 2011 to September 30, 2011), it completely showed that petitioner has Total Available Input Tax in the amount of ₱417,509,030.79 for the following quarters: (1) March 2010; (2) June 2010; (3) September 2010; (4) December 2010; (5) March 2011; (6) June 2011; (7) September 2011. In the said BIR Form No. 2550Q for the period July 1, 2011 to September 30, 2011 admitted into evidence as **Exhibit P-14,** it clearly showed that petitioner has a total VAT Refund/TCC claim from March 2010 to September 2011 in the total amount of **₱389,476,964.43.**

Moreover, petitioner contends that this Court failed to consider that herein petitioner **EXCLUSIVELY SELLS** its products (Ores) to PGPRC, a BOI-registered entity that exported 100% of its processed gold and silver ore; thus, the latter (PGPRC) being engaged in zero-rated sales, in effect, all its Input VAT paid from March 2010 to September 2011 cannot be applied to **ANY OUTPUT TAXES either during or in the succeeding quarters.**

Petitioner also insists, in the instant Motion for Reconsideration, that it has sufficiently established that the Input VAT claims in the amounts of ₱78,982,003.52 (for the period April 1, 2011) and ₱27,484,241.04 (for July 1, 2011 to September 30, 2011) are included in the amount of ₱389,476,964.43 as totaled and reflected in

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[1] *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

the BIR Form No. 2550Q for the first quarter of 2012 forming part of the amount indicated therein (₱417,509,030.79). It is therefore submitted by petitioner that this constitute sufficient compliance to the tenth requisite of the jurisprudentially formulated requisites for tax refund or issuance of tax credit certificate pursuant to Section 106 (A)(2)(a)(5) of the NIRC of 199(7), as amended, and Section 4.106-5(a)(5) of Revenue Regulation (RR) No. 16-2005.

On the other hand, respondent in her Comment/Opposition, alleges that petitioner's contention that it is doctrinally entrenched that a refund may be granted since it had not used the creditable amount or carried over to succeeding taxable quarters is untenable.

Respondent stresses that it is the claimant who 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.[2]

Allegedly, it is incumbent upon petitioner to prove that it is entitled to the refund sought. Failure to prove the same is therefore fatal to its claim for tax refund. It is a well-settled principle in taxation that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law.

THE COURT'S RULING

After careful consideration of the arguments raised by petitioner in the instant motion, the Court is not convinced that petitioner was able to substantially prove that the amounts claimed were not applied against output taxes during and in the succeeding quarters.

In this regard, We reiterate Our findings in the assailed Decision, to wit:

> "Upon verification petitioner's Quarterly VAT Return for the 1st quarter of FY 2012[3], it is shown that petitioner deducted the amounts of ₱360,739,406.51, representing the 'VAT Refund/TCC claimed', and of ₱469,862.26, representing the 'Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding

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[2] *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.
[3] Exhibit "P-14", Docket – Vol. III (CTA Case No. 8690), pp. 1882 to 1886.

NA

period', from the 'Total Available Input Tax' in the amount of ₱417,509,030.79, *resulting in the amount of* ₱56,299,62.02 as 'Total Allowable Input Tax'.

While it can be easily discerned from the said Quarterly VAT Return and the Quarterly VAT Return for the 4th quarter of FY 2011 that the amounts being claimed, i.e., ₱78,982,003.52, for the period April 1, 2011 to June 30, 2011, and ₱27,484,241.04 for July 1, 2011 to September 30, 2011, are included in the said amount of ₱417,509,030.79, it cannot be determined whether or not the said amounts of the claim form part of the "Total Allowable Input Tax" in the amount of ₱56,299,762.02. Thus, We cannot definitely say that the input VAT being claimed in these consolidated cases, or part thereof, were not applied against output taxes during and in the succeeding quarters."

Clearly from the foregoing, there is no merit in petitioner's contention that this Court might have failed to consider what has been shown in BIR Form No. 2550Q for the first quarter of 2012 (Exhibit "P-14"). Particularly, as stated in the said return, the amount of ₱417,509,030.79, representing the "Total Available Input Tax" for the said period, and a portion thereof in the amount of ₱360,739,406.51, which represents the "VAT Refund/TCC claimed", as well as the difference between the said amounts, *i.e.*, ₱56,299,62.02 as "Total Allowable Input Tax" or more appropriately described as an excess or overpaid input VAT for the same period, were all considered in the assailed Decision.

Needless to state, the possibility of carrying over the amount of ₱56,299,62.02, as excess or overpaid input VAT for the subject period, to the succeeding periods existed. And because of this, petitioner should have presented during trial, the composition or breakdown of the said amount of ₱56,299,62.02, as well as the amount of ₱360,739,406.51, in order that this Court may definitely conclude that the amounts being claimed for refund or issuance of tax credit certificate, were indeed not carried over to the succeeding periods. Such failure is fatal to petitioner's claim.

To reiterate, one of the requisites that must be complied with by the taxpayer-applicant for the refund of input VAT is that the input VAT has not been applied against output taxes during and in the succeeding quarters. In the instant case, petitioner failed to present conclusive evidence to show that the said input VAT was not applied to the succeeding quarters. Hence, it cannot be said that petitioner complied with the said requisite.

And while it was proven that petitioner exclusively sells its ores to PGPRC,[4] nevertheless, the supposed exclusive sale to PGPRC does not foreclose the possibility of petitioner selling to other non-BOI-registered entities, which transactions, may be subject to the 12% VAT rate. Selling exclusively to PGPRC in itself, does not denigrate the fact that petitioner may still subsequently and possibly incur the 12% output VAT (to which excess input VAT from previous periods may be applied) because the purposes for which petitioner was incorporated are not limited to selling ores, in general, and to selling the same products merely to BOI-registered entities exporting 100% of their products, in particular.[5]

Lastly, it must be emphasized that petitioner, as a party-litigant, is required to prove every minute aspect of its case;[6] and that tax refunds in relation to VAT are in the nature of tax exemptions, which are construed *strictissimi juris*.[7]

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

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[4] Exhibit "P-5".
[5] Exhibit "P-3", Docket – Vol. III (CTA Case No. 8690), pp. 1831 to 1844
[6] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.
[7] Refer to *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.