Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PHIL. GOLD PROCESSING & REFINING CORP.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8652
For: Refund

Members:
DEL ROSARIO, PJ,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
JUN 10 2015 1:24 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by Phil. Gold Processing and Refining Corp. as petitioner, against Commissioner of Internal Revenue as respondent for the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

1 Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
x x x x x x

2 Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
x x x x x x

Petitioner seeks the refund or the issuance of a tax credit certificate (TCC) in the amount of Thirty-Five Million Five Hundred Thirty Thousand Two Hundred Seventy-Nine Pesos (₱35,530,279.00) and Forty-One Million Four Hundred Fourteen Thousand Pesos and 64/100 (₱41,414,000.64), allegedly representing its creditable input taxes for the periods January 1, 2011 to March 31, 2011 and April 1, 2011 to June 30, 2011, respectively.

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, principally engaged in the business of processing, milling, crushing, refining, smelting, and concentrating mineral resources. It was issued a Certificate of Incorporation on December 27, 2004 by the Securities and Exchange Commission (SEC) under its former name, LFT Processing

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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
>
> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
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> x x x x x x

Corporation.[3] Likewise, petitioner is registered with the Board of Investments[4] (BOI) and with the Bureau of Internal Revenue (BIR) as a value-added taxpayer.[5]

Respondent Commissioner of Internal Revenue is the public officer authorized under the National Internal Revenue Code (NIRC) of 1997, as amended, to examine any taxpayer, to assess the correct amount of internal revenue tax, and to act on claims for refund or tax credit.

Petitioner filed through the Electronic Filing and Payment System (eFPS) its Quarterly and Amended Quarterly VAT Returns for the 3rd and 4th quarters of fiscal year ending June 30, 2011 on April 20, 2011[6], July 25, 2011[7], and July 29, 2011[8], respectively.[9]

On December 10, 2012, petitioner filed an Application for Input Tax Credit for the 3rd and 4th quarters of fiscal year ending June 30, 2011 with the Tax and Revenue (VAT) Group under the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF-OSS) in the amounts of ₱35,530,279.00 and ₱41,414,000.64,[10] respectively. Meanwhile, on December 13, 2012,[11] petitioner completed the submission of the supporting documents to its claim and paid the corresponding filing fee. Petitioner also obtained its claim stubs from the DOF-OSS.

Respondent failed to act on the said claims for refund or issuance of tax credit certificates, prompting petitioner to file the instant Petition for Review on May 10, 2013.

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[3] Par. 1, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 1021.
[4] Par. 3, Summary of Stipulated Facts, JSFI, Docket, p. 1022; Exhibits "P-5".
[5] Pars. 4 and 5, Summary of Stipulated Facts, JSFI, Docket, p. 1022; Exhibit "P-4".
[6] Exhibit "P-13".
[7] Exhibit "P-14".
[8] Exhibit "P-15".
[9] Par. 6, Summary of Stipulated Facts, JSFI, Docket, p. 1022.
[10] Par. 7, Summary of Stipulated Facts, JSFI, Docket, p. 1022.
[11] Exhibits "P-9", "P-9", and "P-10".

In her Answer filed on July 11, 2013, respondent raised the following Special and Affirmative Defenses[12]:

"SPECIAL AND AFFIRMATIVE DEFENSES

xxx xxx xxx

2. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

3. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

4. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

5. 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;

6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php35,530,279.00 and Php41,414,000.64 as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 3rd Quarter and 4th Quarter of fiscal year ending June 2011 (or for the period January 31, 2010 to June 30, 2011) was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

7. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);

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[12] Pars. 2 to 8, Special Affirmative Defenses, Answer, Docket, pp. 833-834.

8. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).*"

The Court issued a Notice of Pre-Trial Conference[13] on July 23, 2013, and on August 22, 2013 and August 29, 2013, petitioner and respondent filed their respective Pre-Trial Briefs.[14] Thereafter, the parties filed their Joint Stipulation of Facts and Issues[15] and Supplemental Joint Stipulation with Manifestation and Motion for the Petitioner[16] on November 4, 2013 and on November 28, 2013, respectively. Subsequently, the Court issued the Pre-Trial Order on January 2, 2014.[17]

During trial, petitioner presented witnesses Juanita Lilet A. Dato-Abuel[18] and Atty. Clifford E. Chua[19]. After completion of their testimonies, petitioner filed its Formal Offer of Evidence[20] on January 30, 2014.

Petitioner offered the following exhibits, to wit:

Exhibit	Description
P-1	Secretary's Certificate dated May 9, 2013
P-2	Articles of Incorporation of LFT Processing Corp.
P-3	Articles of Incorporation of PGPRC
P-4	BIR Certificate of Registration of PGPRC OCN9RC0000108340
P-4-A	BIR Certificate of Registration of PGPRC OCN8RC000036156
P-5	BOI Certificate of Registration
P-5-A	Certificate of Registration with BOI dated February 7, 2008
P-5-B	PGPRC's BOI-ID Certificate No. 2010-094 dated July 19, 2010

[13] Docket, p. 836.
[14] Docket, pp. 837-854 and 856-858.
[15] Docket, pp. 1021-1023.
[16] Docket, pp. 1042-1046.
[17] Docket, pp. 1072-1077.
[18] Minutes of the Hearing, Docket, pp. 1037-1038.
[19] Minutes of the Hearing, Docket, pp. 1063-1067.
[20] Docket, pp. 1087-1162.

P-5-C	PGPRC's BOI-ID Certificate No. 2011-A098 dated July 21, 2011
P-5-D	PGPRC's BOI-ID Certificate No. 2012-078 dated July 17, 2012
P-6	BIR Form No. 1914 Application for Tax Refund & Credit for the 3rd Quarter of Fiscal Year June 2011
P-7	BIR Form No. 1914 Application for Tax Refund & Credit for the 4th Quarter of Fiscal Year June 2011
P-8	O.R. Receipt No. 0616927
P-9	Department of Finance Claim Stub for the 3rd Quarter of the Fiscal Year June 2011
P-10	Department of Finance Claim Stub for the 4th Quarter of the Fiscal Year June 2011
P-11	BIR Ruling No. DA (VAT-073) 435-2009 dated August 3, 2009
P-12	Letter dated July 8, 2009 SGV & Co.
P-13	BITR Form No. 2550-Quarterly VAT Return for Third Quarter (January to March 2011) for the Fiscal Year ending June 2011
P-14	Quarterly VAT Return for Fourth Quarter (April to June 2011) for the Fiscal Year ending June 2011
P-15	Amended Quarterly VAT Return for Fourth Quarter (April to June 2011) for the Fiscal Year ending June 2011
P-16	Schedule of Export Sales for the Month of January 2011
P-17	Schedule of Export Sales for the Month of February 2011
P-18	Schedule of Export Sales for the Month of March 2011
P-19	Schedule of Export Sales for the Month of April 2011
P-20	Schedule of Export Sales for the Month of May 2011
P-21	Schedule of Export Sales for the Month of June 2011
P-22	Authority to Print Sales Invoice
P-23	Authority to Print Official Receipt
P-24	Proof of Inward Remittances (HSBC Certification)
P-24-1	Proof of Inward Remittances (HSBC Certification)
P-25	Schedule of Importations for the Month of January 2011
P-26	Schedule of Importations for the Month of February 2011
P-27	Schedule of Importations for the Month of March 2011
P-28	Schedule of Importations for the Month of April 2011
P-29	Schedule of Importations for the Month of May 2011
P-30	Schedule of Importations for the Month of June 2011
P-31	BIR Form No. 1702 Annual Income Tax Return for the Fiscal Year ending June 2011
P-32	Certification dated October 25, 2012 issued by RDO No. 70, Revenue Region 10, BIR (January 2011 to March 2011)
P-33	Certification dated October 25, 2012 issued by RDO No. 70, Revenue Region 10, BIR (April 2011 to June 2011)
P-34	Judicial Affidavit of Atty. Juanita Lilet Abuel

P-34-A	Signature of Atty. Juanita Lilet Abuel
P-35	SALES INVOICE NO. 0061 Standard Chartered PLC
P-36	SALES INVOICE NO. 0062 Metalor Technologies SA
P-37	SALES INVOICE NO. 0063 West LB AG
P-38	SALES INVOICE NO. 0064 BNP Paribas Bank
P-39	SALES INVOICE NO. 0065 Standard Chartered PLC
P-40	SALES INVOICE NO. 0066 West LB AG
P-41	SALES INVOICE NO. 0067 BNP Paribas Bank
P-42	SALES INVOICE NO. 0068 Standard Chartered PLC
P-43	SALES INVOICE NO. 0069 West LB AG
P-44	SALES INVOICE NO. 0070 BNP Paribas Bank
P-45	SALES INVOICE NO. 0071 Standard Chartered PLC
P-46	SALES INVOICE NO. 0072 West LB AG
P-47	SALES INVOICE NO. 0073 BNP Paribas Bank
P-48	SALES INVOICE NO. 0074 Standard Chartered PLC
P-49	SALES INVOICE NO. 0075 Metalor Technologies SA
P-50	SALES INVOICE NO. 0076 West LB AG
P-51	SALES INVOICE NO. 0077 BNP Paribas Bank
P-52	SALES INVOICE NO. 0078 Standard Chartered PLC
P-53	SALES INVOICE NO. 0079 Metalor Technologies SA
P-54	SALES INVOICE NO. 0080 West LB AG
P-55	SALES INVOICE NO. 0081 BNP Paribas Bank
P-56	Export Declaration No. E-2010-334
P-57	Export Declaration No. E-2010-339
P-58	Export Declaration No. E-2011-001
P-59	Export Declaration No. E-2011-009
P-60	Export Declaration No. E-2011-074
P-61	Export Declaration No. E-2011-011
P-62	Export Declaration No. E-2011-013
P-63	Export Declaration No. E-2011-016
P-64	Export Declaration No. E-2011-020
P-65	Export Declaration No. E-2011-024
P-66	Export Declaration No. E-2011-026
P-67	Export Declaration No. E-2011-041
P-68	Export Declaration No. E-2011-044
P-69	Export Declaration No. E-2011-046
P-70	Export Declaration No. E-2011-052
P-71	Export Declaration No. E-2011-057
P-72	Export Declaration No. E-2011-059
P-73	Export Declaration No. E-2011-061
P-74	Export Declaration No. E-2011-064
P-75	Export Declaration No. E-2011-065
P-76	Export Declaration No. E-2011-080
P-77	Export Declaration No. E-2011-082
P-78	Export Declaration No. E-2011-085
P-79	Export Declaration No. E-2011-089
P-80	Export Declaration No. E-2011-094
P-81	Export Declaration No. E-2011-099
P-82	Inv. No. 10-051
P-83	Inv. No. 10-052
P-84	Inv. No. 001-11
P-85	Inv. No. 002-11

P-86	Inv. No. 018-11
P-87	Inv. No. 003-11
P-88	Inv. No. 004-11
P-89	Inv. No. 005-11
P-90	Inv. No. 006-11
P-91	Inv. No. 007-11
P-92	Inv. No. 008-11
P-93	Inv. No. 009-11
P-94	Inv. No. 010-11
P-95	Inv. No. 011-11
P-96	Inv. No. 012-11
P-97	Inv. No. 013-11
P-98	Inv. No. 014-11
P-99	Inv. No. 015-11
P-100	Inv. No. 016-11
P-101	Inv. No. 017-11
P-102	Inv. No. 019-11
P-103	Inv. No. 020-11
P-104	Inv. No. 021-11
P-105	Inv. No. 022-11
P-106	Inv. No. 023-11
P-107	Inv. No. 024-11
P-108	Transport Permit No. MPP-V-076-2010
P-109	Transport Permit No. MPP-V-077-2010
P-110	Transport Permit No. MPP-V-078-2011
P-111	Transport Permit No. MPP-V-079-2011
P-112	Transport Permit No. MPP-V-095-2011
P-113	Transport Permit No. MPP-V-080-2011
P-114	Transport Permit No. MPP-V-081-2011
P-115	Transport Permit No. MPP-V-082-2011
P-116	Transport Permit No. MPP-V-083-2011
P-117	Transport Permit No. MPP-V-084-2011
P-118	Transport Permit No. MPP-V-085-2011
P-119	Transport Permit No. MPP-V-086-2011
P-120	Transport Permit No. MPP-V-087-2011
P-121	Transport Permit No. MPP-V-088-2011
P-122	Transport Permit No. MPP-V-089-2011
P-123	Transport Permit No. MPP-V-090-2011
P-124	Transport Permit No. MPP-V-091-2011
P-125	Transport Permit No. MPP-V-092-2011
P-126	Transport Permit No. MPP-V-093-2011
P-127	Transport Permit No. MPP-V-094-2011
P-128	Transport Permit No. MPP-V-096-2011
P-129	Transport Permit No. MPP-V-097-2011
P-130	Transport Permit No. MPP-V-098-2011
P-131	Transport Permit No. MPP-V-099-2011
P-132	Transport Permit No. MPP-V-100-2011
P-133	Transport Permit No. MPP-V-101-2011
P-134	Airway Bill No. 1485-9460
P-135	Airway Bill No. 1485-9541
P-136	Airway Bill No. 1485-9810
P-137	Airway Bill No. 1485-9784
P-138	Airway Bill No. 1534-2132
P-139	Airway Bill No. 1500-7016
P-140	Airway Bill No. 1500-7075
P-141	Airway Bill No. 1500-7241
P-142	Airway Bill No. 1500-7215
P-143	Airway Bill No. 1500-7543
P-144	Airway Bill No. 1500-7705
P-145	Airway Bill No. 1500-7871
P-146	Airway Bill No. 1513-3101

P-147	Airway Bill No. 1513-3053
P-148	Airway Bill No. 1513-3484
P-149	Airway Bill No. 1513-3495
P-150	Airway Bill No. 1513-3392
P-151	Airway Bill No. 1513-3860
P-152	Airway Bill No. 1513-3904
P-153	Airway Bill No. 1534-2165
P-154	Airway Bill No. 1534-2412
P-155	Airway Bill No. 1534-2364
P-156	Airway Bill No. 1534-2876
P-157	Airway Bill No. 1534-2806
P-158	Airway Bill No. 1559-1030
P-159	Airway Bill No. 1559-1273
P-160	Audited Financial Statements
P-161	Amended 4th Quarter VAT Return for the Fiscal Year ending June 2011
P-162	IEIRD C-206874 SCHENK PROCESS AUSTRALIA PTY LTD
P-163	IEIRD C-206208 GEA BLOKSMA B V
P-164	IEIRD C-206607 NSL CHEMICALS MALAYSIA SDN BHD
P-165	IEIRD C-111180 SOLVAY PEROXYTHAI LIMITED
P-166	IEIRD C-110687 TAPECASE LTD
P-167	IEIRD C-111707 METALOR TECHNOLOGIES SA
P-168	IEIRD C—149 METSO MINERALS WEAR PROTECTION PTY LTD
P-169	IEIRD C-1424 SPX PROCESS EQUIPMENT
P-170	IEIRD C-1940 WEIR MINERALS
P-171	IEIRD C-1983 WEIR MINERALS
P-172	IEIRD C-1007 UPU SKAFF HK INTERNATIONAL CO LTD
P-173	IEIRD C-2417 PANGANG GROUP INTERNATIONAL
P-174	IEIRD C-1596 TAIWAN PURCHASING CO LTD
P-175	IEIRD C-3605 SYKES GROUP
P-176	IEIRD C-5414 PT JEMBO CABLE COMPANY TBK
P-177	IEIRD C-5340 TONGSUH PETROCHEMICAL CORP LTD
P-178	IEIRD C-5323 PANGANG GROUP INTERNATIONAL
P-179	IEIRD C-7769 SCHENK PROCESS AUSTRALIA PTY LTD
P-180	IEIRD C-6530 YOONSTEEL MALAYSIA SDN BHD
P-181	IEIRD C-5879 VOITH TURBO PTE LTD
P-182	IEIRD C-10506 BEIJING SINO GRINDING INTERNATIONAL PTY LTD
P-183	IEIRD C-9665 HANDAN ZHONGYAN CHEMICAL CO LTD
P-184	IEIRD C-12759 METSO MINERALS AUSTRALIA LTD
P-185	IEIRD C-12207 THERMAL TRANSFER PRODUCTS
P-186	IEIRD C-14295 SELECTED INDUSTRIAL GROUP LIMITED
P-187	IEIRD C-14366 BEIJING SINO GRINDING INTERNATIONAL PTY LTD
P-188	IEIRD C-14339 BEIJING SINO GRINDING INTERNATIONAL PTY LTD
P-189	IEIRD C-11459 METSO MINERALS OY DC EUROPE
P-190	IEIRD C-17117 R AND V AUSTRALIA PTY LTD
P-191	IEIRD C-16867 ADVANCED PURCHASING LTD
P-192	IEIRD C-12427 ESC PALL EUROPE CORP
P-193	IEIRD C-18025 BEIJING SINO GRINDING INTERNATIONAL

P-194	IEIRD C-13232 FLSMIDTH KREBS INC
P-195	IEIRD C-13198 METSO MINERALS AUSTRALIA PTY LTD
P-196	IEIRD C-13813 SCHENCK PROCESS AUSTRALIA PTY LTD
P-197	IEIRD C-14251 LUDOWICI AUSTRALIA
P-198	IEIRD C-20899 PT JEMBO CABLE COMPANY TBK
P-199	IEIRD C-13534 ELASTOMERS AUSTRALIA PTY LTD
P-200	IEIRD C-23329 TONGSUH PETROCHEMICAL
P-201	IEIRD C-22716 INDO GERMAN CARBON LTD
P-202	IEIRD C-16818 METSO MINERALS OY DC EUROPE
P-203	IEIRD C-16571 RCR ENGINEERING
P-204	IEIRD C-25254 ADVANCED PURCHASING SERVICES
P-205	IEIRD C-31465 TONGSUH PETROCHEMICAL CORP
P-206	IEIRD C-33450 NSL CHEMICALS MALAYSIA SDN BHD
P-207	IEIRD C-34257 METSO MINERALS PTY LTD
P-208	IEIRD C-35341 SCHENCK PROCESS AUSTRALIA PTY LTD
P-209	IEIRD C-29896 REQUIP SUPPLIES LTD
P-210	IEIRD C-35399 NSL CHEMICALS MALAYSIA SDN BHD
P-211	IEIRD C-34579 FLSMIDTH KREBS
P-212	IEIRD C-28693 METSO MINERALS OY DC EUROPE
P-213	IEIRD C-39153 LOYTECH PTY LTD
P-214	IEIRD C-39856 CRUSHING AND MINING EQUIPMENT
P-215	IEIRD C-33346 BATA SHOE COMPANY
P-216	IEIRD C-43211 HANDAN ZHONGYAN CHEMICAL CO
P-217	IEIRD C-42916 SOLVAY PEROXYTHAI LTD
P-218	IEIRD C-43932 METSO MINERALS FRANCE SA
P-219	IEIRD C-43962 METSO MINERALS FRANCE SA
P-220	IEIRD C-34552 BATA SHOE COMPANY
P-221	IEIRD C-45887 WEIR MINERALS
P-222	IEIRD C-33300 BRAECO SALES
P-223	IEIRD C-36499 METSO MINERALS OY
P-224	IEIRD C-37076 FL SMIDTH SHANGHAI LTD
P-225	IEIRD C-32804 ADVANCED PURCHASING SERVICES
P-226	IEIRD C-32876 RCR ENGINEERING
P-227	IEIRD C-32786 ELASTOMETER AUSTRALIA PTY LTD
P-228	IEIRD C-50362 TONGSUH PETROCHEMICAL CORP
P-229	IEIRD C-36136 FL SMIDTH SHANGHAI LTD
P-230	IEIRD C-50987 SOLVAY PEROXYTHAI LIMITED
P-231	IEIRD C-40105 METALOR TECHNOLOGIES SA
P-232	IEIRD C-52141 SCHECK PROCESS AUSTRALIA PTY
P-233	IEIRD C-52343 WEIR MINERAL
P-234	IEIRD C-41277 METSO MINERAL OY
P-235	IEIRD C-38419 LUDOWICI AUSTRALIA PTY LIMIT
P-236	IEIRD C-41451 ANSAC PTY LTD
P-237	IEIRD C-50063 RCR ENGINEERING
P-238	IEIRD C-41533 SCHENCK PROCESS AUSTRALIA PTY LIMIT
P-239	IEIRD C-41593 ADVANCED PURCHASING SERVICES
P-240	IEIRD C-36184 AUSSIE DISPOSALS

P-241	IEIRD C-56719 ERIEZ MAGNETICS SHANGHAI LTD
P-242	IEIRD C-42550 METSO MINERALS WEAR PROTECTION
P-243	IEIRD C-44743 METSO MINERALS OY
P-244	IEIRD C-59077 RCR ENGINEERING
P-245	IEIRD C-46099 R AND V AUSTRALIA PTY LTD
P-246	IEIRD C-59645 SEW EURODRIVE PTY LTD
P-247	IEIRD C-61428 METSO MINERALS INDIA PTY LTD
P-248	IEIRD C-45703 LUDOWICI AUSTRALIA
P-249	IEIRD C-47122 TEGA INDUSTRIES LTD
P-250	IEIRD C-47428 TEGA INDUSTRIES LTD
P-251	IEIRD C-63492 METSO MINERALS WEAR PROTECTION
P-252	IEIRD C-63484 TONGSUH PETROCHEMICAL CORP LTD
P-253	IEIRD C-45814 SCHENCK PROCESS AUSTRALIA PTY LTD
P-254	IEIRD C-47405 WEIR MINERALS
P-255	IEIRD C-66247 NSL CHEMICAL MALAYSIA SDN BHD
P-256	IEIRD C-64487 WEIR MINERALS
P-257	IEIRD C-67094 TYCO PUMPING SYSTEMS
P-258	IEIRD C-67935 SEW UERODRIVE PTE LTD
P-259	IEIRD C-49860 THERMOFISHER SCIENTIFIC
P-260	IEIRD C-50074 SULZER PUMPS ASIA PACIFIC PTE LTD
P-261	IEIRD C-49452 NETZSCH LANZHOU PUMPS CO LTD
P-262	IEIRD C-69704 ADVANCED PURCHASING SERVICES
P-263	IEIRD C-47474 WEIR MINERALS
P-264	IEIRD C-51719 WEIR MINERALS
P-265	IEIRD C-52005 METSO MINERALS OY
P-266	IEIRD C-52013 AUSTMAIL WORLDWIDE EXPRESS
P-267	IEIRD C-71179 SOLVAY PEROXYTHAI LTD
P-268	IEIRD C-71889 BEIJING SINO GRINDING INTERNATIONAL
P-269	IEIRD C-76419 METSO MINERALS AUSTRALIA LTD
P-270	IEIRD C-52266 METSO MINERALS TIANJIN INTERNATIONAL
P-271	IEIRD C-54542 INTERNORMEN TECHNOLOGY INC
P-272	IEIRD C-73961 SOLVAY PEROXYTHAI LTD
P-273	IEIRD C-55738 MULTOTEC PTY LTD
P-274	IEIRD C-71276 ADVANCED PURCHASING SERVICES
P-275	IEIRD C-75914 NSLCHEMICALS MALAYSIA SDN BHD
P-276	IEIRD C-76958 MCQUAID ENGINEERING LTD
P-277	IEIRD C-77048 DEPENDABLE GLOBAL EXPRESS
P-278	IEIRD C-57983 METALOR TECHNOLOGIES S A
P-279	IEIRD C-58184 R AND V AUSTRALIA PTY LTD
P-280	IEIRD C-79443 TONGSUH PETROCHEMICALS
P-281	IEIRD C-79399 INDO GERMAN CARBONS LTD
P-282	IEIRD C-81147 CSE UNISERVE PTY LTD
P-283	IEIRD C-81135 RCR ENGINEERING
P-284	IEIRD C-82254 SOLVAY PEROXYTHAI LTD
P-285	IEIRD C-59563 FL SMIDTH KREBS
P-286	IEIRD C-61801 BATA SHOE COMPANY
P-287	IEIRD C-890 METSO MINERAL INC

P-288	IEIRD C-62749 METSO MINERAY OY
P-289	IEIRD C-86185 METSO MINERAL WEAR PROTECTION
P-290	IEIRD C-60828 SHANGHAI JF MACHINERY CO LTD
P-291	IEIRD C-87339 ACT PRODUCING TRADING SERVICES
P-292	IEIRD C-86464 TECO ELECTRIC AND MACHINERY CO LTD
P-293	IEIRD C-62290 URAS TECHNO CO LTD
P-294	IEIRD C-88775 MINPRO MINING AND ENGINEERING
P-295	IEIRD C-90828 NSLCHEMICALS MALAYSIA SDN BHD
P-296	IEIRD C-66506 RCR MINING PTY LTD
P-297	IEIRC C-66821 ADVANCED PURCHASING SERVICES
P-298	IEIRD C-66346 LUDOWICI AUSTRALIA PTY LTD
P-299	IEIRD C-66354 METSO MINERAL WEAR PROTECTION
P-300	IEIRD C-92630 FUJIAN PROVINCE FANG CHENG TRADE CO
P-301	IEIRD C-66359 NETZSCH LANZHOU PUMPS CO
P-302	IEIRD C-43362 FLSMIDTH KREBS
P-303	IEIRD C-65919 THERMO FISHER SCIENTIFIC
P-304	IEIRD C-93301 LUOYANG GUORUN PIPES CO LTD
P-305	IEIRD C-93661 TONGSUN PETROCHEMICAL CORP LTD
P-306	IEIRD C-93220 SCHENCK PROCESS AUSTRALIA PTY LTD
P-307	IEIRD C-94113 METSO MINERALS WEAR PROTECTION
P-308	IEIRD C-94903 SOLVAY PEROXYTHAI LTD
P-309	IEIRD C-95912 ACT PRODUCING TRADING SERVICES
P-310	IEIRD C-71117 WEIR MINERALS
P-311	IEIRD C-95986 SOLVAY PEROXYTHAI LTD
P-312	IEIRD C-70193 THERMO FISHER SCIENTIFIC
P-313	IEIRD C-72109 METSO MINERAL OYTAMPERREN
P-314	IEIRD C-99461 METSO MINERAL INDIA PVT LTD
P-315	IEIRD C-58917 TAIWAN PURCHASING CO LTD
P-316	IEIRD C-81142 ADVANCED PURCHASING SERVICES
P-317	IEIRD C-63187 METSO MINERAL INDIA LTD
P-162-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 52
P-163-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 53
P-164-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 61
P-165-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 108
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P-169-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 3039

P-170-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 3048
P-171-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 3052
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P-175-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 4582
P-176-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 7628
P-177-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 7581
P-178-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 7582
P-179-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 10861
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P-194-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 14559
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P-200-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 26030
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P-208-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 40235
P-209-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 32359
P-210-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 44201
P-211-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 37788
P-212-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 33962
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P-214-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 47644
P-215-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 35521
P-216-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 49228
P-217-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 49229
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P-219-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 50333
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P-223-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 39476
P-224-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 39474
P-225-A	Statement of Settlement of Duties and Taxes bearing Official Receipt41959
P-226-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 41956
P-227-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 41954
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P-232-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 60017
P-233-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 60018
P-234-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 45303
P-235-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 45304
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P-237-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 62825
P-238-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 45302
P-239-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 45301
P-240-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 45781
P-241-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 63511
P-242-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 53392
P-243-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 48871
P-244-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 68585
P-245-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 50289
P-246-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 70994
P-247-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 70971
P-248-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 51065
P-249-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 51064
P-250-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 51089
P-251-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 72165
P-252-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 72163
P-253-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 56463
P-254-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 51088
P-255-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 74830
P-256-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 74815
P-257-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 76642
P-258-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 76644
P-259-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 53813

P-260-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 53816
P-261-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 53809
P-262-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 78655
P-263-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 54986
P-264-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 56439
P-265-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 56430
P-266-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 56428
P-267-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 80699
P-268-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 80681
P-269-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 84764
P-270-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 65792
P-271-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 59024
P-272-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 84765
P-273-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 59879
P-274-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 85763
P-275-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 88442
P-276-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 88169
P-277-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 88343
P-278-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 61661
P-279-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 61924
P-280-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 88782
P-281-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 90639
P-282-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 91251
P-283-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 92491
P-284-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 92488
P-285-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 64919
P-286-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 65839
P-287-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 991
P-288-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 67557
P-289-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 96989

P-290-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 76310
P-291-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 98945
P-292-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 98921
P-293-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 76515
P-294-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 99603
P-295-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 103601
P-296-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 72037
P-297-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 72036
P-298-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 72033
P-299-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 72039
P-300-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 103577
P-301-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 72857
P-302-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 74387
P-303-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 74269
P-304-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 106615
P-305-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 106613
P-306-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 106614
P-307-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 106801
P-308-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 106794
P-309-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 108162
P-310-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 75302
P-311-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 107762
P-312-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 84718
P-313-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 77701
P-314-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 111242
P-315-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 68588
P-316-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 91252
P-317-A	Statement of Settlement of Duties and Taxes bearing Official Receipt 68952
P-318	ICPA Report dated October 24, 2013
P-318-A	Signature of Atty. Clifford Chua in the ICPA Report dated October 24, 2013
P-319	Judicial Affidavit of Atty. Clifford Chua

P-319-A	Signature of Atty. Clifford Chua in his Judicial Affidavit

In the Resolution[21] dated March 18, 2014, the Court admitted Exhibits "P-1" to "P-4", "P-5", "P-5-A", "P-5-B", "P-5-C", "P-5-D", "P-6" to "P-24", "P-25" to "P-55", "P-58" to "P-81", "P-84" to "P-107", "P-110" to "P-133", "P-136" to "P-301", "P-303" to "P-303-A", "P-305-A" to "P-311-A", and "P-313-A" to "P-319-A"; but denied Exhibits "P-4-A", "P-24-1", "P-56", "P-57", "P-82", "P-83", "P-108", "P-109", "P-134", "P-135", "P-302", "P-304-A", and "P-312-A".

On April 11, 2014, petitioner filed its "Manifestation with Motion for Partial Reconsideration of the Resolution dated 18 March 2014".[22] In the Resolution[23] dated June 2, 2014, the Court partially granted the said Motion and admitted Exhibits "P-4-A", "P-56", "P-57", "P-82", "P-83", "P-108", "P-109", "P-134", "P-135", "P-302", "P-304-A", and "P-312-A". The parties were also ordered to submit their respective memoranda.

On June 20, 2014 and June 24, 2014, respondent and petitioner respectively filed their Memoranda.[24] The case was then submitted for decision on June 27, 2014.[25]

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

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

2. Whether petitioner is entitled to claim for a refund or tax credit in the amounts of ₱35,530,279.00 and ₱41,414,000.64 for the 3rd

[21] Docket, pp. 1218-1222.
[22] Docket, pp. 1226-1233.
[23] Docket, pp. 1255-1257.
[24] Docket, pp. 1258-1263 and 1265-1283.
[25] Resolution dated June 27, 2014, Docket, p. 1285.
[26] Statement of Issues, JSFI, Docket, pp. 1022-1023.

and 4th quarters of the fiscal year ending June 30, 2011 representing alleged unutilized input VAT during the said periods?

Petitioner anchors its claim on Section 112(A) of the NIRC of 1997, as amended, quoted hereunder for easy reference:

"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."

Based on the afore-quoted Section 112(A), the following requisites must be complied with in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales:

1. the taxpayer is VAT-registered;
2. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
3. the input taxes are due or paid;
4. the input taxes are not transitional input taxes;
5. the input taxes have not been applied against output taxes during and in the succeeding quarters;
6. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
7. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas;*
8. where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
9. the claim is filed within two years after the close of the taxable quarter when such sales were made.[27]

The last requisite pertains to the period for filing of the administrative claim for refund or tax credit. As categorically stated under Section 112(A), the application for tax credit certificate or refund must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 3rd and 4th quarters of fiscal year ending June 30, 2011, which closed on March 31, 2011 and June 30, 2011, respectively. Counting two years from these dates, petitioner had until March 31, 2013 and June 30, 2013 within which to file its administrative claim for refund. Thus, petitioner's filing of two (2) BIR Forms No.

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[27] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue,* G.R. No. 188260, November 13, 2013.

1914[28] (Applications for Tax Credits/Refunds) on December 10, 2012 with the Tax and Revenue (VAT) Group under the DOF-OSS was well within the two-year prescriptive period provided under Section 112(A) of the NIRC of 1997, as amended.

As to the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides:

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

The above provision provides that the BIR Commissioner has 120 days from the date of submission of complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of full or partial denial by the BIR Commissioner, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the BIR Commissioner. However, if after the 120-day period the BIR

[28] Par. 7, Summary of Stipulated Facts, JSFI, Docket, p. 1022; Exhibits "P-6" and "P-7".

Commissioner fails to act on the application for refund or tax credit, the remedy of the taxpayer is to appeal the inaction of the BIR Commissioner to this Court within 30 days.

Applying Section 112(C) of the NIRC of 1997, as amended, the following are the pertinent dates to petitioner's claim for refund:

FY 2011	Date of Filing of Administrative Claim	Date of Submission of Complete Documents	End of 120 days for the BIR Commissioner to decide on the claim	End of 30 days from the expiration of the 120 days	Date of Filing of Judicial Claim
3rd Qtr.	Dec. 10, 2012	Dec. 13, 2012[29]	Apr. 12, 2013	May 12, 2013	May 10, 2013
4th Qtr.					

Based on the above table, petitioner's judicial claim was timely filed within the "120+30 day" period required under Section 112(C) of the NIRC of 1997, as amended.

After establishing the timeliness of the present petition, the Court shall now determine petitioner's compliance with the remaining requisites.

For the 3rd and 4th quarters of fiscal year ending June 30, 2011, petitioner allegedly exported one hundred percent (100%) of its processed gold and silver ore and generated sales therefrom in the respective amounts of ₱1,893,161,293.40[30] and ₱3,152,355,597.98[31], or in the sum of ₱5,045,516,891.38. These sales were purportedly paid in foreign currency and duly accounted for based on the rules and regulations of the *Bangko Sentral ng Pilipinas.* Petitioner posits that such export sales are subject to zero percent (0%) VAT under 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.* – ↳

[29] Petition for Review, Docket, p. 9; Exhibits "P-8" to "P-10".
[30] Exhibit "P-13".
[31] Exhibit "P-15".

(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);"

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

(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:

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 under 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;

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.

Records show that petitioner is registered with the BIR as a VAT taxpayer on March 15, 1996 with Tax Identification Number (TIN) 004-498-686-000, as evidenced by its BIR Certificate of Registration.[32] Petitioner is also a BOI-registered enterprise with a Non-Pioneer Status with Pioneer Incentives, being located in Less Developed Area (LDA) as a new producer of gold and silver dore.[33] However, while petitioner submitted before this Court documents such as zero-rated invoices[34], export documents[35], and certification from Hong Kong and Shanghai Banking Corporation Limited (HSBC), the same do not fully substantiate its purported export sales for the 3rd and 4th quarters of fiscal year 2011.

The Court-commissioned Independent Certified Public Accountant (CPA), Mr. Clifford E. Chua, noted in his report[36] that petitioner's sales denominated in foreign currency relate to the foreign currency inward remittances, as evidenced by Exhibits "P-24" to "P-24-I". Records disclose that Exhibit "P-24" pertains to the HSBC Certification, while Exhibits "P-24- C

[32] Par. 4, Summary of Stipulated Facts, JSFI, Docket, p. 1022; Exhibit "P-4".
[33] Par. 3, Summary of Stipulated Facts, JSFI, Docket, p. 1022; Exhibit "P-5" and "P-5-A".
[34] Exhibits "P-35" to "P-55".
[35] Exhibits "P-56" to P-159".
[36] Exhibit "P-318", p. 6, Results of Procedures Performed, par. 1(f).

A" to "P-24-I" refer to BNP Paribas Consolidated Cash Statements. However, Exhibits "P-24-A" to "P-24-I" were not formally offered in evidence; hence, inadmissible and cannot be considered by this Court. It is well-settled that courts cannot consider evidence which has not been formally offered pursuant to Section 34 of Rule 132 of the Revised Rules of Court.[37]

Moreover, it was noted that the foreign currency remittances indicated in the HSBC Certification do not reconcile with those reflected in the sales invoices issued by petitioner to its clients for the 3rd and 4th quarters of fiscal year 2011. Thus, it cannot be ascertained whether such foreign currency remittances actually pertain to petitioner's export sales for the subject period of claim. This means that petitioner's alleged export sales for the said periods in the amount of ₱5,045,516,891.38 cannot qualify for VAT zero-rating. Consequently, the alleged input VAT incurred by petitioner for the 3rd and 4th quarters of fiscal year 2011 in the amount of ₱76,944,279.64 cannot be refunded.

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[38] Moreover, well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[39]

Since petitioner failed to prove that its foreign currency remittances actually pertain to its alleged export sales for the subject periods, the Court is constrained to deny the present claim.

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[37] *Far East Bank & Trust Company vs. Commissioner of Internal Revenue,* G.R. No. 149589, September 15, 2006.
[38] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 171307, August 28, 2013, citing *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 181136, June 13, 2012.
[39] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. et. al.,* G.R. No. 127105, June 25, 1999; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., et. al.,* G.R. No. L-68252, May 26, 1995.

WHEREFORE, premises considered, petitioner's claim for refund or issuance of tax credit certificate is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PHIL. GOLD PROCESSING & REFINING CORP., *Petitioner,*	**CTA CASE NO. 8652**
	Members:
- *versus* -	**DEL ROSARIO,** *Chairperson,* **UY**, *and* **MINDARO-GRULLA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: **JUN 10 2015** ; 1:24 p.m.

x- x

DISSENTING OPINION

DEL ROSARIO, PJ:

With utmost respect to the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, I disagree in the conclusion denying the claim for refund or issuance of a tax credit certificate considering that pieces of documents duly identified by a witness and forming part of the case records were not considered.

The *ponencia* did not anymore discuss petitioner's compliance with the *other* requirements for entitlement to claim for refund of input tax in view of its findings that petitioner failed to prove that its foreign currency remittances pertain to its export sales during the period of claim, which accordingly makes petitioner's export sales not qualified for VAT zero-rating. The said findings and conclusion were made as the *ponencia* did not give any evidentiary weight on documents marked as Exhibits "P-24-A" to "P-24-I" on the ground that said exhibits were not formally offered in evidence pursuant to Section 34, Rule 132 of the Rules of Court.

While it is a rule that the court shall consider no evidence which has not been formally offered,[1] jurisprudence, however, provided an exception to

[1] SEC. 34. Offer of evidence. The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

said general rule. In *Vda. de Oate v. Court of Appeals,*[2] the Supreme Court held the following:

> "From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In Interpacific Transit, Inc. v. Aviles [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
>
> However, in People v. Napat-a [179 SCRA 403] citing People v. Mate [103 SCRA 484], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case**." *(Boldfacing & Underscoring supplied)*

In *Dizon vs. Court of Tax Appeals*,[3] the Supreme Court stressed that the doctrine laid down in *Vda. De Oate* still subsists in this jurisdiction.

Following *Vda. De Oate*, it is my humble position that the documents marked as Exhibits "P-24-A" to "P-24-I" may be considered in the disposal of this case as these exhibits complied with the requisites mentioned in said *Vda. De Oate case*. Exhibits "P-24-A" to "P-24-I" actually form part of the case records *(contained in black binder of the ICPA Report)* and the same were identified by a testimony duly recorded.[4]

In view of the foregoing, I vote that Exhibits "P-24-A" to "P-24-I" be given probative value, and the case be re-evaluated as the excluded exhibits may change the conclusion of the case.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] G.R. No. 116149, November 23, 1995.
[3] G.R. No. 140944, April 30, 2008.
[4] Exhibit P-319; Docket, pp. 1047-1058; 1053 in relation to Minutes of Hearing; Docket, pp. 1063-1067;1064.