REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FILMINERA RESOURCES CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8610

Members:

Castañeda, *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

AUG 2 7 2015
10:40 a.m.

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AMENDED DECISION

COTANGCO-MANALASTAS, *J.:*

This resolves petitioner's *Motion for Reconsideration of the Decision dated 6 March 2015*[1], filed on March 24, 2015, with respondent's *Comment/Opposition (Re: Motion for Reconsideration of the Decision promulgated 6 March 2015)*[2], filed on April 17, 2015.

Petitioner seeks reconsideration of the assailed Decision[3] dated March 6, 2015 which denied its claim for refund or issuance of tax credit certificate (TCC) in the amount of ₱51,639,178.25, allegedly representing its unutilized input value-added tax (VAT) for the period covering July 1, 2010 to September 30, 2010 or the first quarter of the fiscal year (FY) ending June 30, 2011, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** due to insufficiency of evidence."

In its motion, petitioner prays that the attached Certification issued by the Board of Investment (BOI) dated

[1] Docket, pp. 760-774.
[2] Docket, pp. 781-789.
[3] Docket, pp. 743-759.

January 27, 2010, and TCC issued by the Bureau of Internal Revenue (BIR) on September 23, 2013 covering the period October 1, 2010 to December 31, 2010, be admitted in evidence.

Petitioner essentially seeks the liberal application of the technical rules in admitting as evidence the BOI Certification issued to its client, Philippine Gold Processing and Refining Corporation (PGPRC), which was not formally offered, but was initially attached as Annex D to the Petition for Review. Moreover, petitioner alleges that it was in no position to determine and prove that PGPRC's products were 100% exported at the time of the instant claim for refund was filed considering that the pre-production ore and ROM then sold have yet to become processed products, either gold or silver ore. There is apparently the time difference from actual production to the actual exportation of the processed products.

On the other hand, respondent opposes the motion on the ground that petitioner failed to prove that its sales are zero-rated as contemplated under the law. Respondent insists that aside from the Articles of Incorporation of PGPRC presented by petitioner, there was no sufficient evidence to show that indeed PGPRC exported 100% of its processed gold and silver ore.

In a Resolution[4] dated May 7, 2015, the Court set this case for hearing for the presentation of the documents cited and attached to the motion. On June 1, 2015, petitioner's witness Ms. Joy P. Dompor was recalled to the witness stand.[5] Thereafter, petitioner made an oral formal offer of evidence of Exhibit "BB" – Certified True Copy of the BOI Certification dated January 27, 2010, and Exhibit "CC" – TCC dated September 23, 2013. On even date, the Court admitted the said exhibits, subject to its final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.[6]

Petitioner's motion has merit.

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[4] Docket, pp. 792-795.
[5] Minutes of the hearing held on June 1, 2015, docket, pp. 806-807.
[6] *Ibid.*; Resolution dated June 1, 2015, docket, pp. 808-809.

In view of the admission in evidence of petitioner's Certified True Copy of the BOI Certification[7] and TCC dated September 23, 2013, covering the period October 1, 2010 to December 31, 2010[8], *We* shall now discuss the validity of petitioner's claim for refund/issuance of TCC for the alleged excess and/or unutilized input VAT attributable to zero-rated sales taking into account the other requisites under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.*-
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales."

Based on the aforequoted provision, in order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. that the claim for refund was filed within the two-year prescriptive period;
2. that there must be zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;

[7] Exhibit "BB", docket, pp. 802-803.
[8] Exhibit "CC", docket, p. 805.

4. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and
5. that the input taxes were not applied against any output VAT liability.

As regards the first requisite, it has already been established in the assailed Decision[9] that petitioner seasonably filed both the administrative and judicial claims for refund/issuance of TCC.

With respect to the second requisite, petitioner anchors its claim on Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005 which state as follows:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* - xxx
>
> 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:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.
>
> xxx xxx xxx
>
> SECTION. 4.106-5. *Zero-Rated Sales of Goods or Properties.* — xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — "*Export Sales*" shall mean:

[9] Docket, pp. 751-755.

xxx xxx xxx

> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> xxx xxx xxx
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided, finally,* **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI**. (*Emphasis supplied*)

Considering the foregoing provisions of law and regulations, petitioner must comply with the following requisites in order for its sales to be considered zero-rated:

1. the taxpayer seller must be VAT-registered;
2. the buyer must be a BOI-registered manufacturer/producer; and
3. the buyer's products must be 100% exported as shown by a certification issued by the BOI.

As found in the assailed Decision, petitioner is a VAT-registered entity.[10] Meanwhile, BOI Certification[11] dated January 27, 2010 certifies that PGPRC exported 100% of its total sales volume for the period January 1 to December 31, 2009, and the same has been issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled "Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales". The BOI Certification stated that it shall be valid from January 1 to December 31, 2010 unless sooner revoked by the BOI. Thus, petitioner's sales qualify for VAT zero-rating under the law.

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[10] Docket, p. 757.
[11] Exhibit "BB", docket, pp. 802-803.

In petitioner's Quarterly VAT Return for the first quarter of FY ending June 30, 2011, its zero-rated sales/receipts amounted to ₱678,879,105.84.[12] Based on petitioner's supporting invoices and summaries of sales transactions, the amount of ₱678,879,105.84 consisted of petitioner's ore sales to PGPRC in the amount of ₱678,444,105.84, and revenues from lease of land to PGPRC in the amount of ₱435,000.00, details of which are as follows:

Exh.[13]	Invoice No.	Date	Ore Sales to PGPRC			Land Lease to PGPRC	Total
			In US$	In PhP	Exh.	In PhP	In PhP
"J"	00073	7/31/2010			"P"[14]	145,000.00	145,000.00
"J-1"	00074	7/31/2010	5,507,771.04	251,432,726.52			251,432,726.52
"J-2"	00075	8/31/2010			"Q"[15]	145,000.00	145,000.00
"J-3"	00076	8/31/2010	4,687,528.32	212,375,866.84			212,375,866.84
"J-4"	00077	9/30/2010			"R"[16]	145,000.00	145,000.00
"J-5"	00078	9/30/2010	4,878,721.80	214,635,512.48			214,635,512.48
		Total	**15,074,021.16**	**678,444,105.84**		**435,000.00**	**678,879,105.84**

Pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the amount of ₱435,000.00 revenues derived by petitioner from its lease of land to PGPRC cannot be considered as zero-rated export sale of goods, thus, it is disallowed.

Therefore, out of the total amount of ₱678,879,105.84 zero-rated sales/receipts declared by petitioner in its Quarterly VAT Return for the first quarter of FY ending June 30, 2011, only the amount of ₱678,444,105.84, representing petitioner's ore sales to PGPRC for the same period, is subject to zero percent (0%) VAT.

The Court shall now determine whether petitioner incurred input taxes in connection with its zero-rated sales of ₱678,444,105.84 and if said input taxes were not applied against any of its output VAT liability.

[12] Exhibit "F", line 17.
[13] Docket, pp. 487 to 492.
[14] Docket, p. 663.
[15] Docket, p. 664.
[16] Docket, p. 665.

As reflected in its Quarterly VAT Return for the first quarter of FY ending June 30, 2011, petitioner incurred input VAT in the amount of ₱51,639,178.25, as follows:

Input VAT on	Total
Domestic Purchases of Goods other than Capital Goods	₱ 1,234,980.60[17]
Domestic Purchase of Services	50,404,197.65[18]
Total	**₱51,639,178.25**

In support of the input VAT, petitioner submitted various suppliers' invoices and official receipts[19] and the Report[20] of the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Clifford E. Chua.

Upon careful scrutiny and evaluation of the ICPA's Report and petitioner's supporting documents, input taxes in the amount of ₱1,123,477.49 should be disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-8 and 4.113-1 of RR No. 16-2005. Below is the detailed breakdown of the disallowed input VAT of ₱1,123,477.49:

OR/Invoice				
Date	**Number**	**Exhibit**	**Supplier**	**Input VAT**
1) Input VAT claim, the supporting documents of which were denied admission by the Court in the Resolution[21] dated December 10, 2013 for failure of the formally offered exhibits to correspond with the documents actually marked or for not being found in the records				
7/7/2010	F7001824	I-108	Toyota Makati, Inc.	₱ 5,891.79
8/11/2010	F7003233	I-186	Toyota Makati, Inc.	7,048.90
		I-322	Sycip Salazar Hernandez and Gatmaitan Law Office	17,364.65
			Subtotal	**₱ 30,305.34**
2) Input VAT claim on domestic purchases of services supported by documents other than VAT official receipts in violation of Section 113(A)(2) of the NIRC of 1997, as amended				
7/1/2010	3441	I-17	QA Causeway Printers, Inc.	₱ 600.00
7/27/2010	3503	I-18	QA Causeway Printers, Inc.	4,041.96
7/16/2010	1061	I-83	Iprint Inc.	750.00
7/16/2010	1060	I-84	Iprint Inc.	4,017.86

[17] Exhibit "F", line 21F.
[18] Exhibit "F", line 21J.
[19] Exhibits "I-1" to "I-338".
[20] Exhibit "Y".
[21] Docket, p. 682.

7/16/2010	1058	I-85	Iprint Inc.	4,821.43
7/16/2010	1059	I-86	Iprint Inc.	3,991.07
7/1/2010	02774	I-107	Textron Corporation	7,800.00
8/2/2010	3537	I-115	QA Causeway Printers, Inc.	1,210.71
8/23/2010	858503	I-187	U-Bix Corporation	972.00
9/8/2010	1175	I-290	Iprint Inc.	6,792.86
9/8/2010	1176	I-291	Iprint Inc.	3,991.07
9/8/2010	1172	I-292	Iprint Inc.	857.14
9/8/2010	1173	I-293	Iprint Inc.	9,572.85
9/8/2010	1177	I-294	Iprint Inc.	4,017.86
9/27/2010	083325	I-323	TNT Express Worldwide (Phils) Inc.	104.31
			Subtotal	**₱ 53,541.12**
3) Input VAT claim on domestic purchase of goods supported by VAT invoice but the VAT was not separately indicated thereon				
8/12/2010	3158	I-182	Straightforward Enterprises	₱ 6,888.43
8/13/2010	3518	I-123	Firetron Safety System	2,464.29
9/15/2010	3214	I-316	Straightforward Enterprises	8,052.43
			Subtotal	**₱ 17,405.15**
4) Input VAT claim on domestic purchases of services supported by ORs with manually stamped TIN and without the word VAT after the TIN				
7/7/2010	1203	I-11	Astron Communication Systems	₱ 5,732.14
7/20/2010	3740	I-13	Astron Communication Systems	354.00
			Subtotal	**₱ 6,086.14**
5) Input VAT claim on domestic purchases of goods supported by invoices with manually stamped TIN and without the word VAT after the TIN				
7/12/2010	1206	I-12	Astron Communication Systems	₱ 5,126.79
8/19/2010	1223	I-114	Astron Communication Systems	21,018.21
9/7/2010	1232	I-194	Astron Communication Systems	14,012.14
			Subtotal	**₱ 40,157.14**
6) Input VAT claim on domestic purchases of services with alterations in the supporting VAT ORs but without counter-signature from the authorized representative of the supplier				
7/23/2010	1944	I-324	Imaginet International Inc.	₱ 5,419.20
7/19/2010	35358	I-325	Mcphar Geoservices (Philippines) Inc.	131,791.62
7/9/2010	82515	I-326	Quantum Hotels & Resorts Inc.	22,989.25
7/2/2010	51043	I-327	Southeast Asian Airlines (SEAIR) Inc.	49,200.00
7/23/2010	12212	I-328	Sunvar Incorporated	9,737.43
8/4/2010	5155	I-329	Mapecon Philippines Inc.	2,430.00
8/19/2010	35444	I-330	Mcphar Geoservices (Philippines) Inc.	272,604.66
8/18/2010	77294	I-331	Quantum Hotels & Resorts Inc.	11,638.05
9/17/2010	9633	I-332	AGATEP Associates Inc.	6,428.57
9/21/2010	3227	I-333	NC Lanting Security Specialist Agency	75,895.60
9/27/2010	626130	I-334	TNT Express Worldwide (Phils) Inc.	834.05
			Subtotal	**₱ 588,968.43**

7) Discrepancy between the input VAT claim of ₱51,639,178.25 and the input VAT of ₱51,252,164.08[22] as accounted for by the ICPA	₱ 387,014.17
Subtotal	**₱ 387,014.17**
Total	**₱ 1,123,477.49**

Therefore, out of petitioner's input VAT claim for the first quarter of FY ending June 30, 2011 in the amount of ₱51,639,178.25, only the amount of ₱50,515,700.76 represents petitioner's valid input tax, computed as follows:

	Amount
Input VAT Claim	₱ 51,639,178.25
Less: Disallowed Input VAT	1,123,477.49
Valid Input VAT	**₱ 50,515,700.76**

Since petitioner's sales for the first quarter were all made to PGPRC, the substantiated input VAT of ₱50,515,700.76 is entirely attributable thereto. However, as previously stated, petitioner had receipts from lease of land for the same period in the amount of ₱435,000.00; thus, only the input VAT of ₱50,483,332.22 can be attributed to petitioner's zero-rated sales. It is computed as follows:

Valid Input VAT	₱ 50,515,700.76
Allocated to	
Zero-Rated Sales	₱ 678,444,105.84
Lease of Land	435,000.00
Total	₱ 678,879,105.84
Allocation Factor	
Zero-Rated Sales	99.9359238%
Lease of Land	0.0640762%
Refundable Input VAT Attributable to Zero-Rated Sales	**₱ 50,483,332.22**

Upon verification of petitioner's Quarterly VAT Return[23] for the first quarter of FY 2011 and Notes[24] to Audited Financial Statements for the FY 2011, it had no output tax liability against which the subject input VAT claim may be applied or credited since all of its reported sales/gross receipts for the same FY were zero-rated. Consequently, while the claimed input taxes were carried over to the succeeding quarters, the same remained unutilized until they were

[22] Exhibit "Y", Annex "B".
[23] Exhibit "F", line 19B.
[24] Exhibit "G", Note 24(a).

deducted as "VAT Refund/TCC Claimed"[25] from petitioner's total available input taxes in its Quarterly VAT Return for the first quarter of FY 2012.

WHEREFORE, in view of the foregoing, petitioner's *Motion for Reconsideration of the Decision dated 6 March 2015* is **PARTIALLY GRANTED**, and the assailed Decision promulgated on March 6, 2015 is **MODIFIED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱50,483,332.22, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the first quarter of FY ending June 30, 2011.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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

[25] Exhibit "H", line 23D (included in the amount of ₱360,739,406.51).

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice