REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAGANITO MINING CORPORATION,
Petitioner,

CTA Case No. 8822

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 2 0 2016
4:25 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., ***J.:***

On September 30, 2015, petitioner filed its *Motion for Partial Reconsideration and/or New Trial* to seek partial reconsideration and reversal of this Court's Decision promulgated on September 14, 2015,[1] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of ₱10,343,265.07 representing its unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million incurred during the

[1] Docket, Vol. I, pp. 316-347.

taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013.

SO ORDERED."

In the assailed Decision, the Court disallowed zero-rated sales for the year 2012 amounting to ₱186,044,021.18 for not being properly substantiated with export documents such as bank client advices for the foreign currency proceeds. For the year 2013, zero-rated sales in the total amount of ₱626,948,002.23 were disallowed for not being properly supported by bills of lading and bank client advices for the foreign currency proceeds and PEZA Certification of customers.[2] Further, input taxes for the taxable years 2010, 2011 and 2012 in the aggregate amount of ₱9,335,682.00 were likewise disallowed for failure to comply with the invoicing requirements prescribed by law.[3]

In compliance with this Court's Resolution dated October 7, 2015,[4] respondent seasonably filed on October 21, 2015, her *Comment/Opposition (Re: Motion for Partial Reconsideration and/or New Trial).*

In a Resolution dated December 4, 2015,[5] this Court granted petitioner's motion to reopen the case for the presentation of additional evidence and held in abeyance the resolution of its *Motion for Partial Reconsideration.*

Petitioner's presentation of additional evidence ensued. On March 3, 2016, petitioner filed its Supplemental Formal Offer of Evidence (FOE).[6] Respondent filed her Comment thereto on March 7, 2016.[7]

In a Resolution dated April 4, 2016,[8] this Court admitted Exhibits "P-1920", "P-1920-A", "P-1920-B", "P-1920-1", "P-1920-2", "P-1920-3", "P-1920-4", "P-1920-6", "P-1920-6.1", "P-1920-6.2", "P-1920-6.3", "P-1920-6.4", "P-1920-7", "P-1920-8", "P-1920-9", "P-1920-10", "P-1920-11", "P-1920-12", "P-1920-13", "P-1920-14", "P-

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[2] *Ibid.*
[3] *Id.,* pp. 338-339.
[4] *Id.*, pp. 399-400.
[5] Docket Vol. II, pp. 419-427.
[6] Docket Vol. II, pp. 474-479.
[7] *Ibid.*, pp. 515-518.
[8] *Id.*, pp. 519-525.

1920-15", "P-1920-16", "P-1920-17", "P-1920-18", and "P-1920-19" of petitioner's Supplemental FOE but denied admission as to Exhibits "P-1920-5.1" and "P-1920-5.2" for not being "electronic documents" under Section 1(h) of the Rules on Electronic Evidence (REE) and for petitioner's failure to lay the basis for the introduction of secondary evidence. Likewise in the same Resolution, this Court considered the case submitted anew for decision.

Hence, this Amended Decision.

THE COURT'S RULING

A careful examination of the additional evidence submitted shows that zero-rated sales in the amounts of ₱159,444,703.78 and ₱462,266,844.51 for the taxable years 2012 and 2013, respectively, are properly substantiated:

Taxable Year 2012				
Exhibit	**Invoice No.**	**Sales in USD**	**Forex Rate**	**Sales in PHP**
P-442, P-444, P-1920-1	423	1,262,250.00	42.655	53,841,273.75
P-458 to P-461, P-1920-2 & P-1920-3	426	1,262,250.00	42.955	54,219,948.75
	433	140,250.00	42.955	6,024,438.75
P-702, P-704, P-1920-4	507	950,760.00	41.180	39,152,296.80
P-667, P-669, P-1920-7	503	148,718.00	41.735	6,206,745.73
	TOTAL	**3,764,228.00**		**159,444,703.78**

Taxable Year 2013				
Exhibit	**Invoice No.**	**Sales in USD**	**Forex Rate**	**Sales in PHP**
P-809, P-811, P-1920-8	524	965,260.80	40.705	39,290,940.86
P-810, P-812, P-1920-9	527	127,680.00	40.705	5,197,214.40
P-901, P-1920-10	552	1,081,080.00	43.200	46,702,656.00
P-1225, P-1920-11	685	1,158,300.00	44.150	51,138,945.00
P-1245, P-1247, P-1920-12	545	393,583.93	41.070	16,164,492.01
P-1232 to P-1235, P-1920-13	522	1,471,635.00	40.690	59,880,828.15
	526	169,827.10	40.690	6,910,264.70
P-1297 to P-1300, P-1920-14	660	(3,938.82)	41.155	(162,102.14)
	535	57,722.73	41.155	2,375,578.95
P-1301 to P-1303-A, P-1920-14	550	27,361.34	42.270	1,156,563.84
	661	(196.01)	42.260	(8,283.38)
P-1304 to P-1307, P-1920-14	662	3,951.58	43.200	170,708.26
	564	113,535.70	43.260	4,911,554.38

P-1308 to P-1311, P-1920-14	663	25,589.13	43.420	1,111,080.02
	606	320,869.11	43.420	13,932,136.76
P-1312 to P-1315, P-1920-14	624	378,477.94	43.610	16,505,422.96
	664	50,942.80	44.610	2,272,558.31
P-1316 to P-1318-A, P-1920-14	665	62,987.18	43.540	2,742,461.82
	644	728,137.18	43.540	31,703,092.82
P-1319 to P-1322, P-1920-14	666	768,504.47	43.540	33,460,684.62
	682	85,389.39	43.540	3,717,854.04
P-1323 to P-1325, P-1920-14	684	1,000,995.01	43.760	43,803,541.64
	802	111,221.67	43.760	4,867,060.28
P-1326, P-1920-14	803	1,676,350.72	44.395	74,421,590.21
	TOTAL	**10,775,267.95**		**462,266,844.51**

Petitioner did not submit additional supporting documents for the following disallowed zero-rated sales for the taxable year 2012 in the amount of ₱26,599,317.40, which are not supported by bank credit advices:

Taxable Year 2012				
Exhibit	**Invoice No.**	**Sales in USD**	**Forex Rate**	**Sales in PHP**
P-443	430	140,250.00	42.655	5,982,363.75
P-451	501	68,714.60	43.070	2,959,537.82
P-468	499	135,408.00	42.720	5,784,629.76
P-530	500	274,388.40	43.270	11,872,786.07
	Subtotal	**618,761.00**		**26,599,317.40**

Regarding the unsupported difference between the zero-rated sales per VAT Returns[9] and Schedule of Zero-Rated Sales for the taxable year 2013[10] amounting to ₱164,681,157.71, petitioner avers that the same represents zero-rated sales other than the sale of nickel ore. Further, it submits that its zero-rated sales per VAT returns include all types of sales, including other zero-rated sales, *i.e.* not pertaining to its sales of ores from its mining activity, to which its capital goods purchases are not attributable. Hence, the substantiated zero-rated sales pertain only to its sale of ores from mining activities.[11]

In the assailed Decision, the Court computed the ratio of petitioner's substantiated zero-rated sales by dividing the same by the zero-rated sales declared per Quarterly VAT Returns. On the other hand, the Independent CPA reported the following:[12]

[9] Exhibits "P-1523", "P-1540", "P-1555" and "P-1570".
[10] Schedule V of Exhibit "P-9", Docket Vol. I, pp. 229-231.
[11] Paragraph 18 of Motion for Partial Reconsideration and/or New Trial, Docket Vol. I, p. 360.
[12] Exhibit "P-9", p. 13, Docket Vol. I, p. 214.

Table I
Summary of Petitioner's Revenue under Zero Rated Activities
For Taxable Years 2010, 2011, 2012 and 2013

Year	Sale of Ore	Service (Despatch) Income Subject to Zero rated VAT	Rental Income Subject to Zero rated VAT	Total zero rated Sales
2010	2,088,982,305	-	-	2,088,982,305
2011	2,751,941,163	22,949,279	2,217,720	2,777,108,162
2012	3,093,865,541	28,947,431	2,217,720	3,125,030,692
2013	3,109,100,863	159,074,523	5,606,635	3,273,782,021

It should be noted that for the year 2012, petitioner declared ₱3,093,865,540.54 zero-rated sales in its VAT returns,[13] which, based on the preceding table in the ICPA report, pertains only to petitioner's zero-rated sales from sale of ores. For the year 2013, petitioner declared a total of ₱3,273,782,021.06,[14] which includes its zero-rated sales from sale of ore, service (despatch) income, and rental income. It can be inferred that petitioner's zero-rated sales for the year 2012 is underdeclared.

Petitioner asserts that its input taxes were directly attributable to its sales from mining activities, thus:[15]

Petition for Review

> "The above **input taxes were directly attributable to its zero-rated sales**, were paid in the course of its trade and business, are duly supported by invoices and/or receipts, are not carried forward to the succeeding quarter or quarters subsequent to the filing of the claim, and have not been applied against any VAT output tax liability of the petitioner during the same period." *(Emphasis supplied.)*

[13] Exhibits "P-1477", "P-1490", "P-150"1 and "P-1513" and Schedule XIII of Exhibit "P-9", Docket Vol. I, p. 241.
[14] Exhibits "P-1523", "P-1540", "P-1555" and "P-1570" and Schedule XIV of Exhibit "P-9", Docket Vol. I, p. 243.
[15] Paragraph 18 of Petition for Review, Docket Vol. I, p. 11 and Paragraphs 14 and 15 of Memorandum for the Petitioner, Docket Vol. I, p. 295.

Memorandum for the Petitioner

> "**Said VAT input taxes** were paid by petitioner in the course of its trade and business and are **all directly attributable to petitioner's zero-rated export sales.**"
>
> "**Petitioner is engaged solely in zero-rated export sales, except for isolated transactions for which the corresponding output taxes were set-off against its excess input taxes**. xxx" *(Emphasis supplied.)*

As it turned out, petitioner had other zero-rated sales for the years 2012 and 2013 other than from mining activities. The ICPA reported how he proceeded to substantiate petitioner's zero-rated sales:[16]

> "We examined the documents supporting the export sales of mineral ore such as invoices, bank debit advice, bills of lading and export declaration for selling of ore.
>
> **We referred to the audited financial statement of the Petitioner to determine the amount of the service income from despatch and rental. These revenues are rendered to PEZA registered entities and their mining customers (see exhibits P-1921 to P-1930 for sample documentation).**" *(Emphasis supplied.)*

However, Exhibits P-1921 to P-1930 are nowhere to be found in petitioner's formal offer of evidence. In fact, petitioner's submitted evidence were marked as Exhibits "P-1" to "P-1919-A" only.[17]

Thus, petitioner failed to substantiate and prove the nature of its other zero-rated sales and that the capital goods purchased from where input taxes arose and are herein claimed for refund were not used in the generation of such sales. Consequently, the substantiated input taxes cannot be directly and entirely attributed to any of its

[16] Exhibit "P-9", p. 13, Docket Vol. I, p. 214.
[17] Formal Offer of Evidence for the Petitioner, Docket Vol. I, pp. 161-176.

zero-rated sales and shall be allocated proportionately on the basis of the volume of sales.

Petitioner's substantiated zero-rated sales for the taxable years 2012 and 2013 are ₱3,067,266,223.60 and ₱3,109,100,863.35, respectively, computed thus:

	2012	2013
Total zero-rated sales per ICPA Report	₱ 3,125,030,692.00	₱ 3,273,782,021.06
Less: Unsupported zero-rated sales from despatch service and rental income	₱ 31,165,151.00	₱ 164,681,157.71
Unsupported zero-rated sales per findings of the Court	26,599,317.40	-
Total disallowances	₱ 57,764,468.40	₱ 164,681,157.71
Substantiated zero-rated sales	**₱3,067,266,223.60**	**₱3,109,100,863.35**

Accordingly, the rate to be used to attribute the substantiated input taxes to the substantiated zero-rated sales shall be adjusted as follows:

	2012	2013
Properly substantiated zero-rated sales from mining activities	₱3,067,266,223.60	₱3,109,100,863.35
Divided by total zero-rated sales per ICPA Report	₱3,125,030,692.00	₱3,273,782,021.06
Rate	**98.15%**	**94.97%**

We proceed to determine the amount of unutilized input taxes attributable to petitioner's zero-rated export sales.

By submitting additional documents, petitioner was able to prove that out of the total disallowed input taxes of ₱9,335,682.00, the following in the amount of ₱7,837,932.00 are already properly substantiated:

Year	Exhibit	IEIRD No.	IEIRD/ Payment Date	Input Tax
2010	P-1327 to P-1329, P-1920-16	107658476	6/3/2010	₱ 4,098,060.00
2011	P-1337 to P-1343, P-1920-17, P-1920-18	114789647	6/29/2011	3,084,516.00
2012	P-1350 to P-1353, P-1920-19	119387633	2/10/2012	655,356.00
TOTAL INPUT TAXES FROM IMPORTATIONS				**₱7,837,932.00**

Petitioner disagrees with the Court's disallowance of input taxes from domestic purchases of capital goods in the aggregate amount of

₱1,497,750.00, averring that the same was not put at issue since these were reserved for utilization.[18] However, the Court found that the claimed input taxes for refund amounting to ₱22,011,331.91 includes input taxes from domestic purchases of capital goods as reported by the Court-commissioned Independent CPA.[19] The subject disallowance, broken down as follows, should be maintained:

DOMESTIC PURCHASES				
Year	**Exhibit**	**Invoice No.**	**Invoice Date**	**Input Tax**
Supported by undated invoice				
2010	P-1358	C1013008	-	₱ 146,678.57
	P-1374	A111974	-	170,464.29
	P-1375	A111975	-	170,464.29
	P-1377	C1013008	-	146,678.57
	P-1378-A	A112921	-	146,678.57
	P-1378-B	A112922	-	146,678.57
2012	P-1370	96032	-	112,500.00
	Subtotal			*₱ 1,040,142.86*
Supported by invoice without the TIN of the purchaser				
2011	P-1366	4007	6/9/2011	₱ 111,321.43
	P-1378	C1013126	10/26/2011	183,107.14
	Subtotal			*₱ 294,428.57*
Supported by invoice with a different TIN of the purchaser				
2011	P-1359	C1009837	7/9/2011	₱ 145,500.00
	Subtotal			*₱ 145,500.00*
Supported by service and spare parts invoice showing purchase of supplies				
2011	P-1368	07255	6/9/2011	₱ 17,678.57
	Subtotal			*₱ 17,678.57*
TOTAL DISALLOWED INPUT TAX FROM DOMESTIC PURCHASES				**₱1,497,750.00**

In fine, out of the total ₱61,377,657.86 input taxes declared by petitioner in its Quarterly VAT Returns for the taxable years 2010, 2011 and 2012, only the amount of ₱59,579,639.90 is duly substantiated for VAT purposes, to wit:

Input taxes from capital goods with acquisition cost exceeding P1M per VAT Returns:			
Taxable year 2010		₱ 4,628,363.58	
Taxable year 2011		17,691,452.70	
Taxable year 2012		39,057,841.58	₱ 61,377,657.86
Less: Disallowances			
1. Unsupported input taxes			
Input taxes per VAT Returns	₱61,377,657.86		
Less: Total input taxes per submitted supporting documents *(Schedule I of Exhibit "P-9")*	61,077,389.90	₱ 300,267.96	

[18] Paragraph 19 of Motion for Partial Reconsideration and/or New Trial, Docket Vol. I, p. 360.
[19] Schedules I and X of Exhibit "P-9", Docket Vol. I, pp. 224-225 and 236.

2. Not properly supported input taxes as found by the Court	1,497,750.00	1,798,017.96
Substantiated input taxes		**₱59,579,639.90**

Consequently, petitioner can only claim the amortized portion of its adjusted properly substantiated input taxes for the taxable years 2012 and 2013 in the total amount of ₱21,638,603.22, computed hereafter:

Exhibit	Invoice Date	Input Tax	Asset Life (Months)	Monthly Amortization	No. of Months	2012	No. of Months	2013	Total
P-1360	6/8/2010	₱ 116,571.43	60	₱ 1,942.86			12	₱ 23,314.29	₱ 23,314.29
P-1361	6/8/2010	116,571.43	60	1,942.86			12	23,314.29	23,314.29
P-1327 to P-1329, P-1920-16	6/3/2010	4,098,060.00	60	68,301.00			12	819,612.00	819,612.00
Total - 2010		**₱4,331,202.86**						**₱ 866,240.57**	**₱ 866,240.57**
P-1330 to P-1332	4/28/2011	₱12,021,962.00	48	₱ 250,457.54			12	₱3,005,490.50	₱3,005,490.50
P-1333 to P-1336	5/11/2011	918,689.00	48	19,139.35			12	229,672.25	229,672.25
P-1362	3/29/2011	131,250.00	60	2,187.50			12	26,250.00	26,250.00
P-1337 to P-1343, P-1920-17 & P-1920-18	6/29/2011	3,084,516.00	48	64,260.75			12	771,129.00	771,129.00
P-1376	10/13/2011	146,678.57	60	2,444.64			12	29,335.71	29,335.71
Total - 2011		**₱16,303,095.57**						**₱4,061,877.46**	**₱4,061,877.46**
P-1344 to P-1349	2/10/2012	₱ 7,756,992.00	48	₱ 161,604.00	11	₱1,777,644.00	12	₱ 1,939,248.00	₱ 3,716,892.00
P-1354 to P-1359	3/13/2012	6,081,344.00	48	126,694.67	10	1,266,946.67	12	1,520,336.00	2,787,282.67
P-1350 to P-1353, P-1920-19	2/10/2012	655,356.00	48	13,653.25	11	150,185.75	12	163,839.00	314,024.75
P-1360 to P-1368	4/10/2012	2,310,872.00	48	48,143.17	9	433,288.50	12	577,718.00	1,011,006.50
P-1369 to P-1373	4/16/2012	7,920,347.75	48	165,007.24	9	1,485,065.20	12	1,980,086.94	3,465,152.14
P-1374 to P-1376	5/21/2012	8,781,067.00	48	182,938.90	8	1,463,511.17	12	2,195,266.75	3,658,777.92
P-1384 to P-1389	7/3/2012	915,068.00	48	19,063.92	6	114,383.50	12	228,767.00	343,150.50
P-1390 to P-1394	8/14/2012	2,271,730.00	48	47,327.71	5	236,638.54	12	567,932.50	804,571.04
P-1340 to P-1346	11/12/2012	241,460.00	48	5,030.42	2	10,060.83	12	60,365.00	70,425.83
P-1371, P-1372	11/22/2012	145,928.58	60	2,432.14	2	4,864.29	12	29,185.72	34,050.00
P-1352 to P-1357-A	12/26/2012	1,865,176.00	48	38,857.83	1	38,857.83	12	466,294.00	505,151.83
Total - 2012		**₱ 38,945,341.33**				**₱6,981,446.28**		**₱ 9,729,038.90**	**₱16,710,485.18**
TOTAL		**₱59,579,639.76***				**₱6,981,446.28**		**₱14,657,156.94**	**₱21,638,603.22**

**rounding difference*

Applying the rate of substantiated zero-rated sales previously computed and petitioner's output taxes due for the taxable years 2012 and 2013, petitioner's adjusted valid input taxes on importation and domestic purchases of capital goods with cost exceeding ₱1Million which are available for refund amounted to ₱14,263,324.04, as shown below:

	2012	2013	TOTAL
Substantiated amortized input taxes	₱ 6,981,446.28	₱ 14,657,156.94	₱ 21,638,603.22
Multiplied by the rate of substantiated zero-rated sales	98.15%	94.97%	
Valid input taxes attributable to zero-rated sales	₱ 6,852,289.52	₱ 13,919,901.95	₱ 20,772,191.47
Less: Output tax	1,509,020.55	4,999,846.88	6,508,867.43
Refundable input taxes	**₱5,343,268.97**	**₱8,920,055.07**	**₱14,263,324.04**

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration* is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision dated September 14, 2015 is amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **FOURTEEN MILLION TWO HUNDRED SIXTY THREE THOUSAND THREE HUNDRED TWENTY FOUR PESOS AND 4/100 (₱14,263,324.04)** representing its unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding ₱1 Million incurred during the taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013."

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.
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.

ROMAN G. DEL ROSARIO
Presiding Justice