Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

CARMEN COPPER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8418
For: Refund

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
JUN 30 2015 ; 2:39 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on January 27, 2012 by Carmen Copper Corporation as petitioner, against Commissioner of Internal Revenue as respondent, before 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:

Petitioner seeks the refund of the amount of Sixty-Five Million Three Hundred Twenty-Nine Thousand Nine Hundred Fifty-Four Pesos and 52/100 (₱65,329,954.52), allegedly representing its excess and unutilized input value-added tax (VAT) paid on the importation of capital goods directly attributable to its zero-rated sales for the taxable year 2010.

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Philippines and registered with the Securities and Exchange Commission (SEC), with office address at the 9th Floor, Quad Alpha

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

x x x x x x

(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.

x x x x x x

Centrum Building, 125 Pioneer Street, Mandaluyong City[3]. It is engaged in the business of mining ores and other mineral resources.[4] Petitioner is also duly registered with the Bureau of Internal Revenue (BIR) as a VAT enterprise with Certificate of Registration No. OCN3RC0000281745 dated October 5, 2004.[5] It is likewise registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1997, as a new producer of copper concentrate with non-pioneer status.[6]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed with the BIR Large Taxpayers Service the following administrative claims for refund of its input VAT payments for the first to fourth quarters of the taxable year 2010:

Exhibit	Period (2010)	Date of Filing Administrative Claim for Refund	Amount of Claim
"N"	First Quarter	March 3, 2011	₱ 57,657,672.73
"O"	Second Quarter	October 21, 2011	₱ 39,670,593.11
"P"	Third Quarter	October 21, 2011	₱ 56,037,962.75
"Q"	Fourth Quarter	October 21, 2011	₱ 33,303,081.83

The BIR, through the OIC-Assistant Commissioner of Large Taxpayers Service Alfredo V. Misajon, issued a Notice to petitioner dated December 5, 2011, partially denying

[3] Exhibit "B".
[4] Exhibit "B-1".
[5] Par. 6, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 394; Exhibit "A".
[6] Exhibit "D".

petitioner's claim for refund of its VAT payments for taxable year 2010.[7]

In the Notice, the BIR informed petitioner that only the amount of ₱117,443,756.22 was recommended for the issuance of a tax credit certificate. The claim for refund or issuance of a tax credit certificate for unutilized input VAT in the amount of ₱65,329,954.52 pertaining to the input VAT attributable to importations of capital goods was disallowed. As indicated in the Notice, the breakdown of the disallowed amounts is as follows:[8]

Total Claim for TCC/Refund		₱ 186,669,310.42
Less: None *(sic)* compliance with invoicing requirements	₱ 3,895,599.68	
Deferred Input Tax on Importations of Capital Goods exceeding ₱1M	65,329,954.52	69,225,554.20
Total Amount Recommended for TCC		**₱117,443,756.22**

In view of respondent's partial denial of its claim, petitioner filed the instant Petition for Review[9] on January 27, 2012.

Within the extended time granted by the Court,[10] respondent filed her Answer[11] on March 22, 2012, interposing the following Special and Affirmative Defenses:

> "5. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

[7] Par. 7, JSFI, Docket, Vol. I, p. 394.
[8] Par. 8, JSFI, Docket, Vol. I, pp. 394-395.
[9] Docket, Vo. I, pp. 6-18.
[10] Order dated February 7, 2012, Docket, Vol. I, p. 303.
[11] Docket, Vol. I, pp. 305-312.

7. Taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. (**CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. No. 141973, June 28, 2005)**

8. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R No. 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835, July 7, 2010)**

9. To support its claim, it is imperative for petitioner to prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of

Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner *(sic)* for review;

d. That the input taxes of P65,329,954.52 allegedly incurred by petitioner for the taxable year 2010 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Sections 112 (A) and (C) of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104.5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

10. The amount of sixty five million three hundred twenty nine thousand nine hundred fifty four and 52/100 being claimed by petitioner arising from excess and unutilized input VAT paid and incurred for the taxable year 2010 is not properly documented.

11. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

A pre-trial conference was scheduled on April 26, 2012.[12] Subsequently, respondent's Pre-Trial Brief[13] was filed on April 18, 2012; while petitioner's Pre-Trial Brief[14] was filed through registered mail on April 23, 2012 and was received by the Court on April 26, 2012. £

[12] Notice of Pre-Trial Conference, Docket, Vol. I, p. 316.
[13] Docket, Vol. I, pp. 317-320.
[14] Docket, Vol. I, pp. 322-340.

Thereafter, the parties filed their Joint Stipulation of Facts and Issues[15] on June 4, 2012. This was approved by the Court via Resolution[16] dated June 8, 2012, which also terminated the pre-trial.

During trial, petitioner presented the following as its witnesses: Mr. Fernando A. Rimando, its Chief Financial Officer; Mr. Jesus B. Caparida, its Comptroller; Atty. Carmen-Rose A. Basallo-Estampador, its Assistant Vice President, Legal Affairs and Corporate Governance; and Mr. Emmanuel Y. Mendoza of Mendoza, Querido & Co., the Independent Certified Public Accountant, commissioned by the Court on August 16, 2012.

Petitioner also presented and formally offered pieces of documentary evidence. In a Resolution[17] dated April 24, 2013, the Court admitted petitioner's Exhibits "A", "B", "B-1", "C", "C-1", "D", "E", "F", "F-1", "F-2", "G", "G-1", "G-2", "H", "H-1", "H-2", "I", "I-1", "I-2", "K", "L", "M", "R", "R-1", "S", "S-1", "W", "X", "X-1", "Y", "Y-1", "CC", "CC-1", "DD", "DD-1", "EE", "EE-1", "JJ", "JJ-1", "KK", "KK-1", "LL", "LL-1", "MM", "MM-1", "NN", "NN-1", "OO", "OO-1", "PP", "PP-1", "TT", "TT-1", "UU", and "UU-1". Petitioner filed a Motion for Partial Reconsideration and to Reopen Case[18] on May 20, 2013 and a Supplemental Formal Offer of Evidence[19] on October 25, 2013. Thereafter, Exhibits "J", "Z", "T-1" to "T-235", "U-1" to "U-39", "V-1" to "V-3", "CC-1" to "CC-154", "FF-1" to "FF-7", "GG-1" to "GG-22", "HH-1" to "HH-84", "AA", "BB", "II", "RR", "SS", "N", "N-1", "O", "O-1", "P", "P-1", "Q", and "Q-1" were also admitted.[20]

Petitioner's exhibits are as follows:

Exhibits	Description
A	CCC's Certificate of Registration with the Bureau of Internal Revenue ("BIR")

[15] Docket, Vol. I, pp. 391-397.
[16] Docket, Vol. I, p. 413.
[17] Docket, Vol. II, pp. 672-674.
[18] Docket, Vol. II, pp. 675-691.
[19] Docket, Vol. II, pp. 746-755.
[20] Resolution dated January 21, 2014, Docket, Vol. II, pp. 790-792.

B	Securities and Exchange Commission ("SEC") Certificate of Incorporation SEC Registration No. CS200414509, dated September 16, 2004, with attached Articles of Incorporation ("AOI")
C	SEC Certificate of Filing of Amended Articles of Incorporation dated November 18, 2008, with attached Amended Articles of Incorporation
C-1	Primary purpose in the Amended Articles of Incorporation of CCC
D	CCC's Certificate of Registration No. 2006-158 issued by the Board of Investment ("BOI")
E	BOI Certification dated January 14, 2011
F	CCC's Original Quarterly VAT return for the 1st quarter of taxable year ("TY") 2010, with attachments
F-1	Portion of Exhibit F with receiving stamp of BIR Revenue District Office (RDO No. 41) showing the date April 26, 2010
F-2	Signature of Mr. Jesus B. Caparida
G	CCC's Original Quarterly VAT return for the 2nd quarter of TY 2010, with attachments
G-1	Portion of Exhibit G with receiving stamp of BIR RDO No. 41 showing the date July 26, 2010
G-2	Signature of Mr. Jesus B. Caparida
H	CCC's Original Quarterly VAT return for the 3rd quarter of TY 2010, with attachments
H-1	Portion of Exhibit H with receiving stamp of BIR RDO No. 41 showing the date July 26, 2010
H-2	Signature of Mr. Jesus B. Caparida
I	CCC's Original Quarterly VAT return for the 4th quarter of TY 2010, with attachments
I-1	Portion of Exhibit H with receiving stamp of BIR RDO No. 41 showing the date January 25, 2011
I-2	Signature of Mr. Jesus B. Caparida
J	CCC's Amended Quarterly VAT return for the 1st quarter of TY 2010

K	CCC's Amended Quarterly VAT return for the 2nd quarter of TY 2010
L	CCC's Amended Quarterly VAT return for the 3rd quarter of TY 2010
M	CCC's Amended Quarterly VAT return for the 4th quarter of TY 2010
N	CCC's administrative claim for refund (BIR Form No. 1914) of its excess and unutilized input VAT for the 1st quarter of TY 2010, filed with BIR Large Tax Excise Audit Division ("LTEAD") 1
N-1	Portion of Exhibit N indicating the date stamp of BIR LTEAD 1, dated March 3, 2011
O	CCC's administrative claim for refund (BIR Form No. 1914) of its excess and unutilized input VAT for the 2nd quarter of TY 2010, filed with BIR LTEAD 1
O-1	Portion of Exhibit O indicating the date stamp of BIR LTEAD 1, dated October 21, 2011
P	CCC's administrative claim for refund (BIR Form No. 1914) of its excess and unutilized input VAT for the 3rd quarter of TY 2010, filed with BIR LTEAD 1
P-1	Portion of Exhibit P indicating the date stamp of BIR LTEAD 1, dated October 21, 2011
Q	CCC's administrative claim for refund (BIR Form No. 1914) of its excess and unutilized input VAT for the 4th quarter of TY 2010, filed with BIR LTEAD 1
Q-1	Portion of Exhibit Q indicating the date stamp of BIR LTEAD 1, dated October 21, 2011
R	CCC's Amended Quarterly VAT return for the 1st quarter of TY 2011
R-1	BIR's EFPS Filing Confirmation on April 20, 2012
S	CCC's Amended Quarterly VAT return for the 2nd quarter of TY 2011
S-1	EFPS Filing Confirmation on May 3, 2012

T-1 to T-235	VAT official receipts (ORs") and/or VAT invoices issued by various suppliers, Import Entry and Internal Revenue Declarations ("IEIRD") issued by the Bureau of Customs ("BOC"), ORs issued by banks and other equivalent documents showing actual payment of VAT issued by the suppliers
U-1 to U-39	VAT ORs and invoices issued by CCC
V-1 to V-3	Certificate of Inward Remittance of the total amount of Eighty Million Seven Hundred Fifty-Four Thousand Seven Hundred Fifty-Six Dollars (USD80,754,756.00), dated January 12, 2011 issued by Banco de Oro Unibank, Inc.-Trust and Investments Group Certificate of Inward Remittance No. DB644-11-01 of the total amount of Fifteen Million Three Hundred Fifty-Nine Thousand Six Hundred Thirty-One Dollars and Ninety-Nine Cents (USD15,359,631.99), dated January 7, 2011 issued by Banco de Oro Certificate of Inward Remittance No. 0488/2010 of the total amount of Eighty-Five Million Seven Hundred Eighty-Eight Thousand Five Hundred Eighty Dollars and Seventy-One Cents (USD85,788,580.71), dated January 5, 2011
W	Notice addressed to CCC issued by OIC-Assistant Commissioner of Large Taxpayers Service Alfredo V. Misajon, dated December 5, 2011
X	CCC's Amended Quarterly VAT return for the 3rd quarter of TY 2011
X-1	EFPS Filing Confirmation on May 4, 2012
Y	CCC's Amended Quarterly VAT return for the 4th quarter of TY 2011
Y-1	EFPS Filing Confirmation on May 7, 2012
Z	CCC's Original Quarterly VAT return for the 1st quarter of TY 2012
AA	CCC's Original Quarterly VAT return for the 2nd quarter of TY 2012
BB	CCC's Schedule of Input VAT for TY 2010

CC-1 to CC-154	Provisional receipts issued by CCC to MRI Trading
CC	Sworn Statement of Mr. Fernando A. Rimando to Questions Propounded by Atty. Mignonette E.G.D. Balein, dated June 6, 2012
CC-1	Signature of Mr. Rimando
DD	Independent Certified Public Accountant ("ICPA") Report dated September 17, 2012, filed with the Court of Tax Appeals on September 17, 2012
DD-1	Signature of Mr. Emmanuel Y. Mendoza
EE	Sworn Statement of Mr. Emmanuel Y. Mendoza to Questions Propounded by Atty. Mignonette E.G.D. Balein, dated September 21, 2012
EE-1	Signature of Mr. Emmanuel Y. Mendoza
FF-1 to FF-7	Schedule of Depreciable Assets
GG-1 to GG-22	General Ledgers for Property, Plant and Equipment, including Work in Progress
HH-1 to HH-84	Journal Vouchers
II	Lapsing Schedule prepared by CCC
JJ	Supplemental ICPA Report dated October 16, 2012, filed with the Court of Tax Appeals on October 16, 2012
JJ-1	Signature of Mr. Emmanuel Y. Mendoza
KK	Supplemental Sworn Statement of Mr. Emmanuel Y. Mendoza to Questions Propounded by Atty. Mignonette E.G.D. Balein, dated October 22, 2012
KK-1	Signature of Mr. Emmanuel Y. Mendoza
LL	CCC's Quarterly VAT return for the 1st quarter of TY 2012
LL-1	BIR email notification confirming the filing through the BIR's EFPS of Exhibit "LL"
MM	CCC's Quarterly VAT return for the 2nd quarter of TY 2012 c

MM-1	BIR email notification confirming the filing through the BIR's EFPS of Exhibit "MM"
NN	CCC's Quarterly VAT return for the 3rd quarter of TY 2012
NN-1	BIR email notification confirming the filing through the BIR's EFPS of Exhibit "NN"
OO	Sworn Statement of Mr. Jesus P. Caparida to Questions Propounded by Atty. Mignonette E.G.D. Balein, dated November 21, 2012
OO-1	Signature of Mr. Jesus P. Caparida
PP	Sworn Statement of Atty. Carmen Basallo-Estampador to Questions Propounded by Atty. Mignonette E.G.D. Balein, dated November 22, 2012
PP-1	Signature of Atty. Carmen Basallo-Estampador
RR SS	2011 Lapsing Schedules
TT	Judicial Affidavit of Mr. Emmanuel Y. Mendoza dated January 16, 2013
TT-1	Signature of Mr. Emmanuel Y. Mendoza
UU	Second Supplemental ICPA Report dated December 13, 2012, filed with the Court of Tax Appeals on December 13, 2012
UU-1	Signature of Mr. Emmanuel Y. Mendoza

On the other hand, respondent presented Revenue Officer Teresa Divina T. Holgado as her sole witness. In a Resolution[21] dated April 29, 2014, Exhibits "R-1", "R-2", "R-3", "R-4", and "R-4-1" of respondent were admitted.

Respondent offered the following documentary exhibits, to wit:

Exhibits	Description
R-1	Letter of Authority (LOA) No. LOA-121-2011-00000010 dated 24 March 2011

[21] Docket, Vol. II, pp. 829-830.

R-2	Checklist of Requirements and First Request for Presentation of Records dated 4 April 2011
R-3	Memorandum Report dated 5 December 2011
R-4	Judicial Affidavit of Teresa Divina T. Holgado executed on 11 February 2014
R-4-1	Name and signature of Teresa Divina T. Holgado

Thereafter, respondent filed her Memorandum[22] on June 6, 2014; while petitioner filed its Memorandum[23] through registered mail on July 7, 2014, which was received by the Court on July 10, 2014. The case was deemed submitted for decision in a Resolution[24] dated July 22, 2014.

The parties submitted the following issues[25] for this Court's disposition:

1. Whether or not petitioner has complied with the submission of complete documents in support of its administrative claim for refund;

2. Whether or not petitioner's judicial claim for tax refund of value-added tax for taxable year 2010 was timely filed;

3. Whether or not petitioner, based on its sales and the manner by which it is paid for such sales, qualifies as a zero-rated VAT entity pursuant to Section 106(A)(2) of the Tax Code;

4. Whether or not respondent's partial denial of the administrative claim for refund was proper; and

5. Whether or not petitioner, based on the facts and applicable laws, is entitled to a refund or issuance of a tax credit certificate in the additional amount

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[22] Docket, Vol. II, pp. 831-840.
[23] Docket, Vol. II, pp. 849-879.
[24] Docket, Vol. II, p. 883.
[25] Docket, Vol. I, p. 395.

of ₱65,329,954.52, representing its excess and unutilized input VAT for taxable year 2010 paid on domestic purchases of goods and services and importations of capital goods which are directly attributable to petitioner's zero-rated sales for the same period.

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund of the amount of ₱65,329,954.52, representing its alleged excess and unutilized input VAT paid on importations of capital goods directly attributable to zero-rated sales for the taxable year 2010."

Petitioner submitted complete documentary evidence in support of its administrative claims for refund.

Petitioner asserts that it submitted complete documentary evidence in support of its administrative claims for refund. It further contends that its administrative claim was denied only due to the BIR's interpretation of applicable laws and regulations with respect to a refund claim of input taxes, and not due to the alleged insufficiency of its supporting documents.

Respondent counters that there was no sufficient compliance with the filing of the administrative claim for refund, which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the National Internal Revenue Code (NIRC) of 1997. She contends that petitioner did not comply with the prescribed checklist of requirements to be submitted involving a claim for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 53-98. Respondent also points out that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

Annex B-1 of RMO No. 53-98 enumerates the required documents as follows:

VALUE-ADDED TAX
(For audit involving Claim for Refund/TCC)

A.) Requirements from Taxpayer
- I. Requirements mentioned in Annex B
- II. Additional General Requirements

1) 3 copies of "Application for VAT Credit/Refund"
2) Summary List of Local Purchases specifying the following:

xxx xxx xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)
4) Summary of importations made during the period with the following details:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)
6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter
7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency
9) Articles of Incorporation — for first time filers
10) Sales Contract/Agreement
11) BOI Certificate of Registration
12) BIR Certificate of Registration
13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period
14) Sworn statement that ending inventory as of the close of the period covered by the claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter
15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter
16) Copy of the ITR and Certified Financial Statements, if applicable
17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials

III. Additional Specific Requirements

xxx xxx xxx

2. For Zero-Rated Sale of Services (contractors, mining, etc.)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments
b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos
c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B lists the following additional requirements:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any
a. current year/period
b. previous year/period
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable

6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable
8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision , if applicable
9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of "Approval for Effective Zero-Rating of Sales, if applicable
11) Sample invoice/s for "Export/Exempt Sales", if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable

Contrary to respondent's contention, the Court finds that petitioner has indeed submitted complete documentary evidence in support of its administrative claims for refund. In fact, respondent issued a Notice[26] to petitioner dated December 5, 2011 partially granting petitioner's claim for refund of its VAT payments for the taxable year 2010. In the Notice, respondent referred to documents submitted to it by petitioner to substantiate its claim, to wit:

> "Relative thereto, **please be informed that after verification of the documents you submitted to substantiate your claim,** it was ascertained that only the amount of **PESOS: ONE HUNDRED SEVENTEEN MILLION FOUR HUNDRED FORTY THREE THOUSAND SEVEN**

[26] Exhibit "W".

HUNDRED FIFTY SIX & 22/100 (₱117,443,756.22) was recommended for issuance of Tax Credit Certificate (TCC), xxx" *(Emphasis supplied)*

Furthermore, petitioner need not comply with the prescribed checklist of requirements in RMO No. 53-98 in order to claim for refund of input VAT. The Supreme Court in the case of *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[27] held:

> "xxx **There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.** The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities ....' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. **Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'"** *(Emphasis supplied)*

Moreover, if petitioner indeed failed to submit the complete documents in support of its application, respondent could have informed petitioner of its failure, consistent with Revenue Memorandum Circular (RMC) No. 42-03[28]. However, respondent failed to inform petitioner of its purported failure to submit the required documents. *C*

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[27] G.R. No. 205055, July 18, 2014.

[28] RMC No. 42-03 provides:
Subject: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters
Xxx
Q-16: Can the TCC processing office accept supporting documents of claimant companies which were issued denial letters, or letters of denial of claim due to absence of certain documents?

The Court will now rule on petitioner's refund claim.

Petitioner's administrative and judicial claims for refund were timely filed.

Petitioner anchors its claim on Section 112(A) of the 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 of 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,*

A-16: Taxpayers whose claims were denied due to failure to submit supporting documents are given a period of thirty (30) days from receipt of the letter of denial to file a request for reconsideration and to submit the required documents to the Tax and Revenue Group, OSS-DOF or to other concerned BIR offices which issued the denial letter.

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 above-quoted provision, in order to be entitled to a refund or tax credit of input VAT payments attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

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

The Court finds it appropriate to rule first on the timeliness of petitioner's claims for refund.

Section 112(A) of the NIRC of 1997, as amended, provides that a VAT-registered taxpayer 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 refund or tax credit of its creditable input tax due or paid attributable to such sales.

The present claim covers the four (4) quarters of the taxable year 2010, which closed on March 31, 2010; June 30, 2010; September 30, 2010; and December 31, 2010. Counting two (2) years from the said dates, petitioner had until March 31, 2012; June 30, 2012; September 30, 2012; and December 31, 2012, respectively, within which to file its administrative claim for refund. Clearly, petitioner seasonably filed its administrative claim for refund on March 3, 2011[29] and October 21, 2011.[30]

As to the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, expressly grants the taxpayer a 30-day period to appeal to the Court of Tax Appeals (CTA) the decision or inaction of the BIR Commissioner, to wit:

> "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**." *(Emphasis supplied)*

Respondent acted on petitioner's claim and issued a Notice dated December 5, 2011[31], partially denying the administrative claim for refund. Petitioner received the said

[29] Exhibit "N-1".
[30] Exhibits "O-1", "P-1", and "Q-1".
[31] Exhibit "W".

Notice on December 28, 2011.[32] It therefore had 30 days from said date or until January 27, 2012 within which to file an appeal with the Court of Tax Appeals. Petitioner timely filed the instant Petition for Review on January 27, 2012.[33]

The Court will now proceed to determine whether or not petitioner complied with the other requisites for entitlement to a refund or tax credit.

Petitioner failed to comply with the requisites for entitlement to a refund or tax credit of input VAT payments attributable to zero-rated sales.

Petitioner is a VAT-registered entity.

Petitioner is a VAT-registered entity as evidenced by its BIR Certificate of Registration No. OCN3RC0000281745 dated October 5, 2004, with Tax Identification Number 233-903-100-000.[34]

Petitioner failed to prove its zero-rated direct export sales.

The relevant provision in determining whether petitioner's transactions are VAT zero-rated direct export sales is Section 106 of the NIRC of 1997, as amended, which reads:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

[32] Q24 and A24 of the Judicial Affidavit of Mr. Fernando A. Rimando, Exhibit "CC".
[33] Petition for Review, Docket, Vol. I, pp. 6-18.
[34] Exhibit "A".

(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 the case of *Phil. Gold Processing and Refining Corp. vs. Commissioner of Internal Revenue*[35], the Court ruled that for direct export sales to qualify as VAT zero-rated sale pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following conditions must be present:

1. that there was a 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, and
4. that the payment was accounted for in accordance with the rules and regulations of the BSP.

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[35] CTA Case Nos. 8542 and 8577, November 11, 2014.

To establish that there is a VAT zero-rated direct export sale, the VAT-registered taxpayer claiming VAT refund must present at least three (3) types of documents, to wit:

1. the sales invoice as proof of sale of goods;
2. the 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. the bank credit advice, certificate of bank remittance or any other document proving payment of goods in acceptable foreign currency or its equivalent in goods and services.

Petitioner's main business is the mining of copper ore and other metallic ores. Its witness, Mr. Rimando, testified that for the taxable year 2010, all copper concentrates produced from its mining operations were sold and delivered to MRI Trading AG ("MRI" for brevity), a Swiss trading company. He also testified that the delivery to MRI in the taxable year 2010 was made through shipments of the purchased copper concentrates to consignees located in China and Korea.[36]

For the taxable year 2010, petitioner alleges that it generated and recorded zero-rated sales of copper concentrates in the total amount of ₱8,430,348,537.29[37], which was reflected in its amended Quarterly VAT Returns for the same period, broken down as follows:

Period Covered (2010)	**Total Amount of Zero-Rated Sales**
First Quarter	₱ 2,085,424,388.18[38]
Second Quarter	1,656,920,357.42[39]
Third Quarter	2,257,474,234.90[40]

[36] Q14 and A14 of the Judicial Affidavit of Mr. Fernando A. Rimando, Exhibit "CC".
[37] Par. 6, Statement of Material and Judicial Facts, Petition for Review, Docket, Vol. I, p. 8.
[38] Exhibit "J".
[39] Exhibit "K".
[40] Exhibit "L".

Fourth Quarter	2,430,529,556.79[41]
Total	**₱8,430,348,537.29**

To substantiate its alleged zero-rated direct export sales, petitioner presented provisional receipts[42], VAT official receipts and invoices[43] to prove its sale of goods and the receipt of the corresponding proceeds thereof. It also presented certificates of inward remittances[44] to prove that the goods sold were paid for in acceptable foreign currency and duly accounted for in accordance with existing rules and regulations of the *Bangko Sentral ng Pilipinas*.

However, as required by Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, there must be an **actual shipment of the goods from the Philippines to a foreign country**, where the fact of actual shipment can be **evidenced by the export declaration and bill of lading or airway bill**.

Petitioner failed to comply with the foregoing requisite. It did not present any **bills of lading or airway bills** to prove that there were actual shipments of its direct export sales from the Philippines to a foreign country. Neither did the Independent CPA mention in his report of any verification or examination done on the fact of actual shipment of the goods allegedly exported by petitioner. Hence, the Court cannot completely verify the existence of petitioner's zero-rated direct export sales.

The presentation of the Certification from the Board of Investments dated January 14, 2011[45], certifying that 100% of petitioner's sales volume/value for the calendar year 2010 were by way of exports does not sufficiently meet the requirement of the law that there must be actual shipment of the goods from the Philippines to a foreign country.

[41] Exhibit "M".
[42] Exhibits "CC-1" to "CC-154".
[43] Exhibits "U-1" to "U-39".
[44] Exhibits "V-1" to "V-3".
[45] Exhibit "E".

The Court *En Banc* ruled in the case of *Phil. Gold Processing and Refining Corp. vs. Commissioner of Internal Revenue*[46] that the BOI Certification is not sufficient evidence to prove that petitioner's sales are export sales, to wit:

> "Petitioner insists that in view of the Certification issued by the BOI on January 27, 2010 to the effect that petitioner exported 100% of its total sales for calendar year 2009, there was no further necessity to prove that petitioner's export sales are zero-rated.
>
> Again, *We* agree with the findings of the Court in Division that the **BOI Certification is not sufficient evidence to prove that petitioner's sales are export sales**, *to wit:*
>
> > 'In the instant case, this Court finds that the BOI Certification for VAT zero-rating issued in favor of petitioner is not sufficient evidence to prove that it exported 100% of its total sales. The pertinent portion of the BOI Certification reads:
> >
> > > 'Information is hereby given that the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2009 based on the attached documents (Annexes B & C) submitted to the BOI, ...
> > >
> > > It is understood that based on the affidavit executed by **Phil. Gold Processing & Refining Corp.**,

[46] CTA EB No. 1082 (CTA Case No. 8270), November 26, 2014.

> attached as Annex 'A', all information provided herein are true and correct, and any misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil actions that may be warranted under the premises.'
>
> Based on the foregoing, it is clear that the **BOI Certification itself is not sufficient to prove that there was actual shipment of petitioner's goods from the Philippines to the foreign country as the information contained therein originally came from petitioner through its affidavit and sales performance**. Thus, it is merely self-serving and the presumption of regularity in the performance of BOI's duty in issuing the said certification cannot be applied in this case." *(Emphasis supplied)*

The Court finds the same applicable to the present case. In fact, the cited portions of the BOI Certification considered above are also present in the BOI Certification[47] presented by petitioner pertaining to its zero-rated export sales.

Thus, petitioner failed to satisfy the requirements of zero-rated direct export sales in accordance with Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Consequently, petitioner failed to prove that it is entitled to a refund or tax credit of the amount of ₱65,329,954.52, allegedly representing its excess and unutilized input VAT on the importation of capital goods which are directly attributable to zero-rated sales for taxable year 2010.

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[47] Exhibit "E".

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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