REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TAGANITO MINING CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 935

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

TAGANITO MINING CORPORATION,
Respondent.

CTA EB CASE NO. 936
(CTA Case No. 8090)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

DEC 16 2014
4:05 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* are the Petitions for Review[1] filed by Taganito Mining Corporation on October 3, 2012, and Commissioner of Internal Revenue on September 19, 2012, pursuant to Section 18[2] of Republic Act ("RA") No. 1125, as amended by RA No. 9282, and RA No. 9503, both praying for the reversal of the Decision,[3] promulgated by the Second Division of the Court ("Court in Division") on May 25, 2012, and Resolution dated August 30, 2012.[4]

The Parties[5]

Taganito Mining Corporation ("Taganito") is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at 4th Floor, NAC Center (formerly Solid Mills/BMMC Building), Dela Rosa Street, Legaspi Village, Makati City. It is duly registered with the SEC with Certificate of Registration No. 138682 issued on March 4, 1987. It is a VAT-registered entity with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494; and, is a Board of Investment (BOI) registered entity with BOI Certificate of Registration No. EP-88-306 dated April 14, 1988. It is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores and as such, was registered as a VAT-entity and was duly issued Certificate of Registration No. 94-470-000373 (sic).

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[1] *Rollo*, CTA EB Case No. 935 (CTA Case No. 8090), pp. 6-107, with Annexes; *Rollo*, CTA EB Case No. 936 (CTA Case No. 8090), pp. 1-61, with Annexes.

[2] Sec. 18. *Appeal to the Court of Tax Appeals En Banc*. – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

[3] *Rollo*, CTA EB Case No. 935 (CTA Case No. 8090), pp. 87-107; penned by Associate Justice Caesar A. Casanova, with Associate Justice Juañito C. Castaneda, Jr., and Associate Justice Cielito N. Mindaro-Grulla, concurring.

[4] *Id*, pp. 26-38.

[5] *Id*., pp. 87-88.

The Commissioner of Internal Revenue ("CIR") is the duly appointed head of the Bureau of Internal Revenue, vested with authority to exercise the functions of said office, including *inter alia*, the power to decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (Tax Code) or other laws administered by the Bureau of Internal Revenue under Section 4 of the Tax Code, and holding office at the BIR National Office Building, Diliman, Quezon City, Metro Manila, where he may be served with summons and other legal processes of this Honorable Court.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated May 25, 2012, as follows:[6]

> "On December 1, 2009, petitioner filed its administrative claim for tax refund of excess VAT input taxes on its domestic purchases of goods and services and importation of goods in the amount of P42,038,669.54 covering the period January 1, 2008 to December 31, 2008.
>
> Due to respondent's inaction on its administrative claim, petitioner filed the instant Petition for Review on April 21, 2010, to forestall being barred by the two (2) year prescriptive period. In the said Petition for Review, petitioner is claiming refund only of the amount of P34,131,592.29 pertaining to the alleged input VAT incurred/paid on its local purchases and importation of capital goods for the period January 1 to December 31, 2008. Petitioner is praying for the lower amount of P34,131,592.29 because of the alleged representation made by respondent that the portion of its claim pertaining to purchases of non-capital goods and capital goods below P1Million was already about to be released.
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> On June 15, 2010, respondent filed her Answer interposing the following Special and Affirmative Defenses, to wit:

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[6] *Id.*, pp. 87-93.

'4. Taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

6. Petitioner must prove it is entitled to a claim for refund under the strictest terms.

7. Petitioner must prove that it paid the alleged VAT input taxes for the period in question.

8. Petitioner must prove that the same alleged VAT input taxes were not utilized against any output tax liability.

9. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated export sales.

10. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

11. Petitioner's assertion that its zero-rated export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas (BSP) cannot be accorded weight. Plain allegations without any evidentiary document to support its claim will not justify petitioner's application for tax refund.

12. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code of 1997.

13. The claim for refund in the amount of Thirty Four Million One Hundred Thirty One Thousand Five Hundred Ninety Two Pesos and 29/100 (P34,131,592.29) allegedly representing accumulated and unutilized VAT input taxes paid by it for the taxable year 2008 is not properly documented. To support its claim, it is indispensable for petitioner to prove the following:

a) Registration requirements of a value-added taxpayer in compliance with Section 9.236.1 (a) of Revenue Regulations No. 16-2005 and Section 236 of the Tax Code of 1997, as amended;

b) Invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the Tax Code of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant. (Revenue Memorandum Circular No. 42-2003);

c) Petitioner must prove that it has fully complied with the requirements of Section 9.236.1.a of RR No. 16-2005 and Revenue Memorandum Order No. 53-98, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of judicial claim;

d) In relation thereto, Section 112 (C) of the Tax Code of 1997, as amended,

> requires submission of complete documents in support of the application for tax refund filed with respondent before the one hundred twenty (120) day period shall apply and before petitioner could avail of the judicial remedies provided by law. Ergo, petitioner's failure to submit proof of compliance with the aforesaid requirements warrants the dismissal of the instant Petition for Review;

14. In the case entitled *San Roque Corp. vs. Commissioner of Internal Revenue,* the Supreme Court had the occasion to say:

> 'In order to claim a refund or tax credit under Section 112 (A), petitioner must comply with the following criteria:
>
> 1. The taxpayer is VAT-registered;
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> 2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
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> 3. The input taxes are due or paid;
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> 4. The input taxes are not transitional input taxes;
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> 5. The input taxes have not applied against output taxes during and in the succeeding quarters;
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> 6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

7. For zero-rated sales under Section 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 BSP rules and regulations;

8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and that 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 2 years after the close of the taxable quarter when such sales were made.'

15. For a judicial claim for refund of input VAT to prosper, the petitioner must prove that there must be (a) zero-rated or effectively zero-rated sales; (b) that input taxes were incurred or paid; (c) that the input taxes are attributable to zero-rated or effectively zero-rated sales; (d) that the input taxes were not applied against any output VAT liability; and (e) the claim for refund/tax credit must be filed within the two year prescriptive period. (*EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004*)

16. Corollary thereto, Sec. 4.110.8 of RR 16-2005 explicitly provides:

'Input Taxes for the importation of goods or the domestic purchases

> of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sales, or subjected to the 5% Final Withholding VAT must be substantiated and supported by the following documents and must be reported in the information returns required to be submitted to the Bureau: (1) For the importation of goods – import entry or other equivalent document showing actual payment of VAT on imported goods; (2) For domestic purchases of goods and properties – invoice showing the information required under Sections 113 and 237 of the Tax Code.'

17. The provision of law regarding prescriptive periods are jurisdictional, compliance with which is essential for this Honorable Court to exercise authority over the instant case. Such statutes or rules are construed as mandatory as they have been absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business and are necessary incident to the proper, efficient and orderly discharge of official functions.

18. It is well-established in this jurisdiction that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and are therefore held against the claimant. Petitioner must present clear and convincing evidence to merit a tax refund. The taxpayer bears the burden of establishing the factual basis of its claim for refund.

19. Likewise, for a judicial claim to prosper, the party must not only prove that it is a

VAT-registered entity, it must substantiate the input VAT paid by purchase invoices or official receipts (*Commissioner of Internal Revenue vs. Manila Mining Corporation, 468 SCRA 571*). Such that failure to comply with the requirements for a valid request for refund including the requirement for a valid sales invoice is fatal to the claim for refund. (*EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004*)

20. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed strictissimi juris against the person or entity claiming the exemption (*Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005*). The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law and he cannot be permitted to rely upon vague implications. (*BPI Leasing Corporation v. the Honorable Court of Appeals, et al., G.R. No. 127624, November 18, 2003*). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Service vs. Court of Appeals, 357 SCRA 444*).

On August 13, 2010, the parties filed their Joint Stipulation of Facts and Issues which was subsequently approved by the Court per Resolution dated August 16, 2010.

After presentation of its evidence, petitioner filed its Formal Offer of Evidence on April 27, 2011, which was admitted by the Court per Resolution promulgated on June 14, 2011, except for Exhibits 'N-II-28-1' and 'N-II-28-2' which were denied admission for failure of petitioner to submit said exhibits to this Court.

Petitioner filed its Memorandum on October 21, 2011, while respondent filed her Memorandum on October 24, 2011.

In a Resolution promulgated on October 25, 2011, the case was deemed submitted for decision."

The Ruling of the Court in Division

On May 25, 2012, the Court in Division promulgated a Decision[7] partially granting Taganito's Petition for Review by ruling that:

> "**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 P3,981,970.05 representing its unutilized input VAT on capital goods and purchases attributable to its zero-rated sales for the period January 1 to December 31, 2008.
>
> **SO ORDERED.**"[8]

On June 14, 2012, Taganito filed its "Motion for Reconsideration"[9] and CIR filed her "Motion for Reconsideration,[10]" on June 13, 2012. On August 30, 2012, the Court in Division issued a Resolution[11] denying both parties "Motion," the dispositive portion of which is as follows:

> "**WHEREFORE,** there being no new cogent or substantial ground to warrant reconsideration of this Court's decision dated May 25, 2012, petitioner's Motion for Reconsideration and respondent's Motion for Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[12]

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[7] *Id.*, pp. 87-107.
[8] Id., p. 106.
[9] *Id.*, p. 26.
[10] *Id.*
[11] *Id.*, pp. 26-37.
[12] *Id.*, p. 37.

On September 19, 2012, CIR filed her Petition for Review, which was docketed as CTA EB Case No. 936, while Taganito filed its "Petition for Review on October 3, 2012, which was docketed as CTA EB Case No. 935.

Since both Petitions for Review, which are docketed as CTA EB Case No. 936 and CTA EB Case No. 935, involved an appeal from the case of Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8090, of its Decision and Resolution dated May 25, 2012 and August 30, 2012, respectively, the cases were consolidated.[13]

After considering the issues raised by the respective petitioners in their consolidated Petitions for Review, with respondent's CIR Comment in CTA EB Case No. 935 and respondent Taganito's Comment in CTA EB Case No. 936, both parties were required to submit their respective Memoranda.

The CIR filed her Memorandum on July 24, 2013, while Taganito filed its "Motion for Partial Withdrawal and Manifestation" on July 29, 2013.[14]

In Taganito's "Motion for Partial Withdrawal and Manifestation," it prays that its appeal of up to P13,028,119.39 representing its amortized amounts for the years 2011 and 2012 be withdrawn from its original claim of P34,131,592.29, and that its Petition for Review in CTA EB Case No. 935 be considered as its memorandum in the above-captioned case.

In a Resolution dated January 3, 2014, the Court granted the said prayer.

The Issues

Taganito proffers the following grounds:[15]

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[13] *Id.*, Resolution dated October 4, 2012.
[14] *Id.*, Resolution dated May 14, 2013.
[15] *Id.*, Petition for Review dated October 3, 2012, pp. 13-23.

A. **INPUT VAT ON CAPITAL GOODS CLAIMED FOR REFUND BY 100% 0%-RATED TAXPAYERS ARE NOT SUBJECT TO THE RULE ON DEPRECIATION; and**

B. **THE PRESENT RULING OF THE HONORABLE CTA PUTS AT ISSUE THE MANNER OF REFUND OF THE UNAMORTIZED PORTION OF THE VAT ON CAPITAL GOODS IN CLAIMS FOR REFUND.**

On the other hand, the CIR raised the following issues:[16]

1. **WHETHER OR NOT TAGANITO HAS COMPLIED WITH INVOICING AND ACCOUNTING REQUIREMENT FOR VAT REGISTERED PERSONS, AS WELL AS THE FILING AND PAYMENT OF VAT IN COMPLIANCE WITH THE PROVISIONS OF SECTIONS 113 AND 114 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.**

2. **WHETHER TAGANITO HAS COMPLIED WITH THE SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND PURSUANT TO SECTION 112(D) OF THE NIRC OF 1997, AND OF SECTIONS 9.236.1 OF REVENUE REGULATIONS NO. 16-2005 AND REVENUE MEMORANDUM 53-98.**

3. **WHETHER THE AMOUNT OF THIRTY FOUR MILLION ONE HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED NINETY TWO PESOS AND 29/100 (P34,131,592.29) ALLEGEDLY REPRESENTING PETITIONER'S EXCESS AND UNUTILIZED VAT INPUT TAXES PAID FOR THE TAXABLE YEAR 2008 WERE PAID TAGANITO; ATTRIBUTABLE TO TAGANITO'S ZERO-RATED SALES; HAS NOT BEEN APPLIED AGAINST ANY OUTPUT TAX.**

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[16] *Id.*, Memorandum for Respondent dated July 24, 2013, pp. 145-146.

4. **WHETHER TAGANITO'S CLAIM FOR REFUND FOR TAX CREDIT OR REFUND WAS FILED WITHIN THE PERIOD PRESCRIBED BY LAW.**

5. **WHETHER OR NOT TAGANITO IS ENTITLED TO REFUND IN THE AMOUNT OF THIRTY FOUR MILLION ONE HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED NINETY TWO PESOS AND 29/100 (P34,131,592.29) ALLEGEDLY, REPRESENTING TAGANITO'S EXCESS AND UNUTILIZED VAT INPUT TAXES PAID FOR THE TAXABLE YEAR 2008.**

Taganito's Arguments:

Taganito claims that the depreciation or amortization of VAT on capital goods that exceed One Million Pesos only applies when the input tax is credited against the output tax, and not when the input tax is being claimed as refund or tax credit by a VAT zero-rated taxpayer.

Likewise, Taganito alleges that the spreading over of the depreciation or amortization of VAT on capital goods when it exceeds One Million Pesos contradicts the provisions of Section 112(A) of the 1997 National Internal Revenue Code, as amended ("NIRC"), which allows the filing of the claim for refund or issuance of a tax credit certificate of creditable input tax within two (2) years from the close of the taxable quarter when the sales were made in which the spreading over of the depreciation can go beyond the said period.

CIR's Counter Arguments:

The CIR alleges that it is clear in the provision of Section 110 of the 1997 NIRC that if the aggregate acquisition cost of the capital goods purchased in a calendar month exceeds one million pesos, the input tax paid for that purchase of capital goods shall be spread over sixty (60) months or the estimated useful life of the capital goods, whichever is shorter.

More so, she alleges that the filing of the Petition for Review was prematurely filed as petitioner failed to submit complete documents before her, where she could have determine the veracity of the said claim.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the Petitions for Review.

The issues raised by the parties boil down to the principal issue of whether or not Taganito's input tax on its capital goods which exceeds One Million Pesos is subject to amortization as prescribed in Section 110 of the 1997 NIRC despite its claim that it is a zero-rated taxpayer pursuant to Section 112 of the 1997 NIRC.

In the Decision[17] dated May 25, 2012, the Court in Division unanimously ruled as follows:

> "As earlier stated, of the P42,038,669.54 input VAT reflected in petitioner's 2008 Quarterly VAT Returns, only the amount of P34,131,591.93, representing input VAT on its local purchases and importation of capital goods, is the subject of the present claim, detailed as follows:

Exhibit	Invoice/IERD/ Bank OR Date	Name of Supplier	Nature	Net Purchases	Input VAT being claimed
January					
N-11-18		Toyota Shaw, Inc.	Local Purchase	Php1,750,000.00	Php210,000.00
February					
N-11-19,					
N-11-19-2	2/20/2008	Honda Cars Kalookan,Inc.	Local Purchase	2,241,071.50	268,928.58
N-11-32-A	2/12/2008	Union Motor Corporation	Local Purchase	1,145,178.57	137,421.43
March					
N-11-172,					
N-1-172-A	4/18/2008	Marubeni Corporation	Importation	18,873,328.63	2,264,799.44
		Total Input VAT for the 1st Quarter			**Php2,881,149.44**
May					
N-11-173	5/12/2008	Volvo Truck Corporation	Importation	54,413,695.00	6,529,643.40
June					
N-11-93-1	6/11/2008	Aplha Philmotor Sales Corp.	Local Purchase	1,339,285.71	160,714.29
N-11-93-2		Alpha Philmotor Sales Corp.	Local Purchase	732,142.86	87,857.14
N-11-93-2		Alpha Philmotor Sales Corp.	Local Purchase	732,142.86	87,857.14
		Total Input VAT for the 2nd Quarter			**Php6,866,071.97**
July					
N-11-175	8/20/2008	Marubeni Corporation	Importation	89,641,766.66	10,757,012.00
N-11-176	8/20/2008	Volvo Truck Corporation	Importation	56,436,650.00	6,772,398.00
September					
N-11-133	8/11/2008	Isuzu Philippines Corporation	Local Purchase	2,017,857.14	242,142.86
		Total Input VAT for the 3rd Quarter			**Php17,771,552.86**

[17] *Id.*, pp. 49-58.

December					
N-11-177	6/30/2008	Volvo Truck Corporation	Importation	24,300,291.67	2,916,035.00
N-11-174	6/11/2008	Volvo Truck Corporation	Importation	30,806,522.14	3,696,782.66
			Total Input VAT for the 4th Quarter		**Php6,612,817.66**
		TOTAL INPUT VAT CLAIM			**Php34,131,591.93**

Court finds that the following input taxes should be denied for the reason/s stated opposite the specific input tax denied/disallowed, to wit:

INPUT TAX	**TRANSACTION COVERED**	**AMOUNT**	**REASON FOR DENIAL/DISALLOWANCE**
(1) 210,000.00	Purchase of vehicle from Toyota Shaw, Inc.	1,750,000.00	Merely Supported by official receipt.
(2) 137,421.43	Purchase of vehicle from Union Motor Corporation	1,145,178.57	The covering sales invoices are in the name of Municipality of Claver instead of petitioner.
(3) 175,714.28 (P87,857.14 plus P87,857.14)	Purchase of 2 units of vehicles from Alpha Phil Motor Sales Corp.	1,464,285.72	The supporting invoices are undated in violation of Sec. 113(B)(3) of the NIRC of 1997, as amended

Petitioner, thus, complied with the invoicing requirements under Sections 110 (A) and 113 (A) and (B) of the NIRC of 1997 and Sections 4.110-8 (a), 23 4.113-1 (A) 24 and (B) 25 of Revenue Regulations (RR) No. 16-05 only to the extent of P33,608,456.58 out of the total claim of P34,131,592.29, computed as follows:

Amount of Input VAT Claim			P34,131,592.29
Less:	Disallowances		
	Input VAT on petitioner's purchase of vehicle from Toyota Shaw, Inc. supported by a VAT official receipt instead of an invoice	P210,000.00	
	Input VAT on petitioner's purchase of vehicle from Union Motor Corp. supported by invoices not in the name of petitioner	137,421.43	
	Input VAT on petitioner's purchase of 2 vehicles from Alpha Phil Motor Sales Corp	175,714.28	
Input VAT Claim Properly Substantiated			**P33,608,456.58**

Not all of the substantiated input VAT claim of P33,608,456.58 is, however, refundable.

Pursuant to Section 110(A) of the NIRC of 1997, as amended, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds P1Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if aggregate acquisition cost does not exceed P1Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

Records show that the substantiated input tax of P33,608,456.58 pertains to petitioner's purchases of capital goods, the aggregate acquisition cost of which exceed P1Million in the calendar month (regardless of the acquisition cost of each capital good).

Thus, the input VAT of P33,608,456.58 shall be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. Consequently, out of the P33,608,456.58 input VAT incurred by petitioner on capital goods, only the amount of P3,981,970.05 is creditable or refundable as of December 31, 2008, computed as follows:

				Allowable in put VAT		
Exhibit	Capital Goods Purchases exceeding P 1M	Input VAT	Useful Life in months	Month of Acquisition	Remaining Months of 2008	Total
	February					
N-11-19,N-11-19-2	2,241,071.50	268,928.58	60	4,482,14	44,821.43	49,303.57
	March					
N-11-172,N1-172-A	18,873,328.63	2,264,799.44	48	47,183.32	424,649.90	471,833.22
	May					
N-11-173	54,413,695.00	6,529,643.40	48	136,034.24	952,239.66	1,088,273.90
	June					
N-11-93-1	1,339,285.71	160,714.29	48	3,348.21	20,089.29	23,437.50
	July					
N-11-175	89,641,766.66	10,757,012.00	48	224,104.42	1,120,522.08	1,344,626.50
N-11-176	56,436,650.00	6,772,398.00	48	141,091.63	705,458.13	846,549.75
	September					
N-11-133	2,017,857.14	242,142.86	48	5,044.64	15,133.93	20,178.57
	December					
N-11-177	24,300,291.67	2,916,035.00	48	60,750.73		60750.73
N-11-174	30,806,522.14	3,696,782.66	48	77,016.31		77,016.31
INPUT VAT ALLOWABLE FOR REFUND					**3,981,970.05**	

Since only zero-rated sales were reported in petitioner's Quarterly VAT Returns for the year 2008, all of petitioner's purchases and the input VAT it incurred for the same period (including the input VAT of P3,981,970.05) are attributable to its zero-rated sales.

Also, the claimed input taxes were not applied against any output VAT liability during the period of claim since all of petitioner's sales were zero-rated and there was no output VAT due thereon. While the claimed input taxes were carried over to the succeeding quarters, the same remained unutilized until they were deducted as 'Any VAT Refund/TCC Claimed' from petitioner's total available input taxes as of December 31, 2009.

Finally, We shall now determine the timeliness of the filing of petitioner's administrative and judicial claims.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company, Asia, Inc.*, the Supreme Court clarified that Section 112 (A) of the NIRC of 1997, as amended, which provides that the filing of the administrative claim for refund/credit of creditable input VAT should be made within two (2) years from the close of the taxable quarter when the sales were made is the pertinent provision for the refund/credit of input VAT.

In the same Supreme Court decision, the High Tribunal further clarified that the filing of the judicial claim for refund/credit, however, should comply with the provisions of Sec. 112 (D) (now C) of the same Code.

Section 112 (D) (now C) of the NIRC of 1997, provides thus:

> 'Refunds of Tax Credits of Input Tax.
>
> xxx xxx xxx.
>
> (D) 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 Subsections (A) and (B) 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 present claim covers the four (4) taxable quarters of 2008 which closed on March 31, 2008, June 30, 2008, September 30, 2008 and December 31, 2008. Counting two (2) years from the said dates, petitioner had until March 31, 2010, June 30, 2010, September 30, 2010 and December 31, 2010, respectively, within which to file its administrative claim for refund. Clearly, the administrative claim for refund filed on December 1, 2009, is within the 2-year prescriptive period prescribed under Section 112 (A) of the NIRC of 1997, as shown below:

Year 2008	**End of the Quarter**	**End of 2-year Period**	**Administrative Claim filed on**
1st Quarter	March 31, 2008	March 31, 2010	
2nd Quarter	June 30, 2008	June 30, 2010	December 1, 2009
3rd Quarter	September 30, 2008	September 30, 2010	
4th Quarter	December 31, 2008	December 31, 2010	

As regards the timeliness of its judicial appeal, petitioner, upon filing of its administrative claim on December 1, 2009, simultaneously submitted the document in support thereof. This is evident from petitioner's letter-claim dated November 27, 2009, which stated:

> 'Also attached in support of this letter application for refund are the following documents:
>
> 1) Duly accomplished BIR Form No. 1914;
>
> 2) Original and latest amended quarterly VAT Returns for the four (4) quarters of 2008 with supporting schedules on Summary Lists of Sales and Purchases for the year 2008;
>
> 3) Original and latest amended Monthly VAT Declarations for 2008 with supporting schedules or Summary Lists of Sales and Purchases for the year 2008;

> 4) Photocopy of the Certification issued by Security Bank Corporation dated February 17, 2009 as to the export remittance proceeds received by the said bank in favor of TMC for the year 2008;
>
> 5) Photocopy of Certificate of Registration No. OCN 8RC0000017494 and corresponding BIR Form 1905 filed on December 9, 2004;
>
> 6) Annual Income Tax Return for CY 2008 duly filed with the BIR;
>
> 7) Audited Financial Statements for CY 2008 with attached Report of Independent Auditors;
>
> 8) Certification issued by the Department of Finance (DOF) One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center to effect that TMC has not filed any similar, previous and/or outstanding application for tax credit and duty drawback with the said agency for the period January 1, 2008 to December 31, 2008.'

Since no written notice was sent by the respondent informing petitioner that the aforesaid documents are incomplete nor did she require petitioner to submit additional documents, the 120-day period started and continued to run from December 1, 2009, the date when petitioner filed its administrative claim together with the supporting documents. This is in accordance with Revenue Memorandum Circular No. 029-99.

Since petitioner filed its Petition for Review on April 21, 2010, which is well within the 30-day period after the lapse of the 120-day period provided in Section 112 (D) (now C) of the NIRC of 1997, as amended, its judicial appeal was, therefore, timely filed.

After a careful consideration of the factual milieu of the case at bench, the Court sitting *En Banc* finds no reason to depart from the Court in Division's ruling.

The first and second provisions of Section 110(A) of the 1997 NIRC, provides:

"SEC. 110. *Tax Credits.* -

(A) *Creditable Input Tax.* -

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx xxx xxx

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000.00): *Provided,* however, That if the estimated useful life of the capital goods is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee." (Emphasis supplied).

From the foregoing, it is clear that if the aggregate acquisition cost of the capital goods, excluding the VAT component thereof, exceeds one million pesos in a calendar month, the input tax on capital goods shall be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter.

In the case of *Abakada Guro Party List vs. Ermita,*[18] the Supreme Court has affirmed the spread of input tax to over 60 months or the estimated useful life of the capital goods when the acquisition cost of the capital goods, excluding its VAT component thereof, exceeds one million pesos, to wit:

[18] G.R. No. 168056, September 1, 2005, 469 SCRA 1.

"The foregoing section imposes a 60-month period within which to amortize the creditable input tax on purchase or importation of capital goods with acquisition cost of ₱1 Million pesos, exclusive of the VAT component. Such spread out only poses a delay in the crediting of the input tax. Petitioners' argument is without basis because the taxpayer is not permanently deprived of his privilege to credit the input tax.

It is worth mentioning that Congress admitted that the spread-out of the creditable input tax in this case amounts to a 4-year interest-free loan to the government. In the same breath, Congress also justified its move by saying that the provision was designed to raise an annual revenue of 22.6 billion. The legislature also dispelled the fear that the provision will fend off foreign investments, saying that foreign investors have other tax incentives provided by law, and citing the case of China, where despite a 17.5% non-creditable VAT, foreign investments were not deterred. Again, for whatever is the purpose of the 60-month amortization, this involves executive economic policy and legislative wisdom in which the Court cannot intervene." ("Emphasis supplied").

In the present case the input VAT on the purchase of capital goods involves the aggregate amount of P33,608,456.58.[19] Therefore, it is but proper to spread the input VAT to five years pursuant to Section 110 of the 1997 NIRC.

Anent Taganito's claim that the spreading over of capital goods does not apply to a VAT zero-rated taxpayer, Section 112(A) of the 1997 NIRC states the following:

"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

[19] *Rollo*, CTA Case No. 8090 (Decision) dated May 25, 2012, p. 53.

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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."

Section 110(A)(1) of the 1997 NIRC refers to creditable input tax as any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions[20] shall be credited against the output tax.

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[20] SEC. 110. *Tax Credits.* -

(A) Creditable Input Tax. -

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

In the case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue,*[21] the Supreme Court recognizes that any excess of input taxes from zero-rated transactions over output taxes are refundable, to wit:

> "Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. **Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer**.
>
> Zero-rated transactions generally refer to the export sale of goods and services. The tax rate in this case is set at zero. When applied to the tax base or the selling price of the goods or services sold, such zero rate results in no tax chargeable against the foreign buyer or customer. But, although the seller in such transactions charges no output tax, he can claim a refund of the VAT that his suppliers charged him. The seller thus enjoys automatic zero rating, which allows him to recover the input taxes he paid relating to the export sales, making him internationally competitive."(Emphasis supplied).

Therefore, from the foregoing, any input tax from the purchase of capital goods is subject to amortization even if the transaction was zero-rated as petitioner can only claim refund based on its "creditable input tax," that is when input tax exceeds output tax.

Thus, the Court *En Banc* sees no cogent reason to depart from the Court in Division's ruling that the input tax on the purchase of capital goods is among those subject to amortization as ascribed in Section 110(A) of the 1997 NIRC, even if the taxpayer is subjected to zero-rated tax on sales.

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[21] G.R. No. 178090, February 8, 2010, 612 SCRA 28.

The Court *En Banc* shall now proceed to determine the issue of petitioner's allegation that if the amortization is made on input VAT on the purchase of capital goods, it runs counter to the provisions of Section 112(A)[22] of the 1997 NIRC, as the claim can be filed beyond the two (2) years from the close of the taxable quarter when the sales were made.

Petitioners' argument is without basis because the spreading over merely delays the crediting of the input tax[23] and not the filing of the claim. The taxpayer is not deprived of his privilege to credit the input tax as long as it filed its claim within two (2) years from the close of the taxable quarter when the sales were made.

In the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[24] the Supreme Court has held that the input taxes resulting from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall be refunded to the taxpayer. And the reckoning period for the claim is two (2) years from the end of the quarter when the pertinent sale or transactions were made regardless of when the input VAT was paid, to wit:

> "xxx xxx xxx
>
> Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer.
>
> xxx xxx xxx

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[22]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, xxx.

[23] *Abakada Guro Party List vs. Ermita*, G.R. No. 168056, September 1, 2005, 469 SCRA 1.

[24] G.R. Nos. 198729-30, January 15, 2014.

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> Section 112(A) is clear that for VAT-registered persons whose sales are zero-rated or effectively zero-rated, a claim for the refund or credit of creditable input tax that is due or paid, and that is attributable to zero-rated or effectively zero-rated sales, must be filed within two years after the close of the taxable quarter when such sales were made. The reckoning frame would always be the end of the quarter when the pertinent sale or transactions were made, regardless of when the input VAT was paid."

Thus, the amortization of input tax on capital goods does not run counter to the provisions of Section 112(A) of the NIRC.

In sum, the Court *En Banc* finds no reason to rule in the contrary from the Court in Division's Decision and Resolution dated May 25, 2012 and August 30, 2012, respectively.

WHEREFORE, premises considered, the Petitions for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision and Resolution dated May 25, 2012 and August 30, 2012, respectively, are hereby **AFFIRMED** in *toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice