REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TAGANITO MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7428

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
NOV 24 2009; 10:00am

x - x

DECISION

BAUTISTA, *J.*:

This case involves a claim for refund in the amount of P1,885,140.22, representing petitioner's alleged unutilized input value-added tax (VAT) on its domestic purchases of goods and services and on its importation of goods from January 1, 2004 to December 31, 2004.

Taganito Mining Corporation (Petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 4th Floor, Solid Mills Building, Dela Rosa Street, Legaspi Village, Makati City. Petitioner is primarily engaged in the business of exploring, extracting, mining, selling, and exporting precious metals, such as nickel, chromite, cobalt, gold, silver, iron, and all kinds of ores and metals and their by-products. It is a VAT-registered entity with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494. It is also duly registered with the Securities and Exchange Commission, as evidenced by Certificate of Registration No. 138682 issued on March 4, 1987.[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of the said office, including *inter alia*, the power to decide claims for refund of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns on the following dates:

Period Covered 2004	**Date Filed**	**Exhibit**
First Quarter	April 20, 2004	"M"
Second Quarter	July 20, 2004	"Q"
Third Quarter	October 20, 2004	"U"
Fourth Quarter	January 18, 2005	"Y"

Petitioner filed Amended Quarterly VAT Returns on July 20, 2005 for the fourth quarter[2] of 2004 and on December 28, 2005 for the first[3], second[4], and third[5] quarters of 2004.

On December 28, 2005, petitioner filed with respondent, through the latter's Excise Taxpayers' Assistance Division under the Large Taxpayers Division, a claim for refund of VAT input taxes paid on its domestic purchases of taxable goods and services and importation of goods amounting to P1,885,140.22 for the period covering January 1, 2004 to December 31, 2004, in accordance with Section 112(A) and (B) of the NIRC of 1997.[6]

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[1] Pars. 1-3, Stipulated Facts, Joint Stipulation of Facts and Simplication of Issues, *rollo*, pp. 64-65
[2] Exhibit "Z"
[3] Exhibit "N"
[4] Exhibit "R"
[5] Exhibit "V"
[6] Exhibit "AA"

In order to suspend the running of the two-year prescriptive period under the NIRC of 1997 and to preserve its right to judicially claim refund of its unutilized input VAT, petitioner filed a Petition for Review before this Court on March 31, 2006.

On May 8, 2006, respondent filed his Answer[7], alleging the following counter-arguments:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR);
>
> 5. The amount of P1,885,140.20 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services for the year 2004 is not properly documented;
>
> 6. Petitioner must prove that it has complied with the provisions of Sections 112 (A) and (D) and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claiming tax refund/credit;
>
> 7. 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 administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the 1997 Tax Code. Further, Section 112 (D) of the 1997 Tax Code, as amended, 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.** Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.
>
> 8. Petitioner must prove that it has complied with the invoicing requirements mentioned in Section 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations 7-95.
>
> 9. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);**

[7] *Rollo,* pp. 41 to 45

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**."

The parties' Joint Stipulation of Facts and Simplication of Issues filed on September 6, 2006 was approved by this Court through a Resolution dated September 11, 2006.

Trial on the merits then proceeded.

At the hearing held on August 5, 2008, counsel for respondent manifested that since there is no report of investigation, respondent is waiving the right to present evidence. The parties then were given a period of thirty (30) days from August 5, 2008 within which to file their respective memorandum.[8]

On September 1, 2008, respondent filed a Motion for Extension of Time to File Memorandum, which was granted by this Court through an Order dated September 2, 2008. Respondent was permitted to submit his Memorandum until October 4, 2008.

On September 8, 2008, petitioner filed an Urgent Motion for Extension of Time to File Memorandum, which was likewise granted by this Court through a Resolution dated September 29, 2008. Petitioner was given a non-extendible period to file its Memorandum until October 4, 2008.

On September 29, 2008, respondent filed, once again, a Motion for Extension of Time to File Memorandum. The Court gave respondent until November 3, 2008 within which to file a Memorandum, per its Order dated October 6, 2008.

On November 28, 2008, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on October 3, 2008 and respondent's Memorandum filed on November 3, 2008. Hence, this decision.

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[8] Resolution dated August 6, 2008, *rollo*, p. 177

The issue[9], as stipulated by the parties, is:

> "Whether or not Petitioner is entitled to the refund of alleged excess VAT input taxes of One Million Eight Hundred Eighty Five Thousand One Hundred Forty Pesos and 22/100 (PhP1,885,140.22) paid from January 1, 2004 to December 31, 2004."

Section 112(A) of the NIRC of 1997 lays down the requisites for claims for issuance of tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads as follows:

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

From the foregoing, petitioner must comply with the following requisites to be entitled to a refund:

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

[9] *Rollo,* p. 66

As previously stated, petitioner is primarily engaged in the business of exploring, producing, and exporting beneficiated nickel silicate ores and chromite ores. Petitioner contends that these ores are one hundred percent (100%) exported and/or shipped to foreign countries, particularly, to Japan and Australia. This fact is manifested and certified by the Board of Investments (BOI), in accordance with Revenue Memorandum Order (RMO) No. 9-00. Petitioner also insists that these export sales were paid in acceptable foreign currency, specifically, in US Dollars; which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the BSP. Accordingly, the same are subject to zero percent (0%) VAT, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, which reads:

> "**SEC. 106. Value-added Tax on Sale of Goods or Properties. —**
>
> **(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);"

Based on the above-mentioned provision, in order for an export sale to qualify for zero-rating, the following requisites must be present:

1. there was a sale and actual shipment of goods from the Philippines to a foreign country;
2. the sale was made by a VAT-registered person;
3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. the payment was accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

Petitioner has satisfied all the foregoing requirements.

The fact that petitioner is a VAT-registered entity is not disputed.[10] For the period of January 1, 2004 to December 31, 2004, petitioner actually shipped its products abroad to foreign buyers and generated export sales in the amount of US$19,665,033.05, with the peso equivalent of P1,102,032,137.40; as shown in petitioner's Detailed Export Sales Schedule[11], Quarterly VAT Returns[12], export sales invoices[13], export declarations[14], bills of lading[15], ore transport permits[16], outward foreign manifest[17], and Certification issued by the BOI[18]. Likewise, the foreign currency proceeds of US$19,665,033.05 derived from said export sales were inwardly remitted and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, as evidenced by bank credit advices[19].

Having resolved that petitioner's export sales qualify as VAT zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the Court now determines the amount of input VAT attributable thereto.

Petitioner's total input VAT based on its Amended Quarterly VAT Returns for taxable year 2004 amounted to P1,885,140.22, broken down as follows:

2004 Period	Exhibit	Input Tax
1st Quarter	N to N-3	P 930,142.02
2nd Quarter	R to R-3	160,741.55
3rd Quarter	V to V-3	528,649.42
4th Quarter	Z to Z-3	265,607.23
Total		**P 1,885,140.22**

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[10] Par. 3, Stipulated Facts, Joint Stipulation of Facts and Simplification of Issues, *rollo*, p. 65
[11] Exhibit "E"
[12] Exhibits "N" to "N-3", "R to "R-3", "V" to "V-3", "Z" to "Z-3"
[13] Exhibits "OO", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX", "YY", and "ZZ"
[14] Exhibits "OO-3-A", "PP-3-A", "PP-3-B", "QQ-3-B", "RR-3-A", "SS-3-A", "SS-3-B", "TT-3-A", " "UU-3-A", "VV-3-A", "VV-3-B", "WW-3-A", "XX-3-A", "YY-3-A", and "ZZ-3-B"
[15] Exhibits "UU-3-C", "VV-3-C", and "XX-3-C"
[16] Exhibits "TT-3-D" and "VV-3-D"
[17] Exhibit "YY-3-E "
[18] Exhibits "I-1" and "I-2"
[19] Exhibits "OO-1", "OO-2", "PP-1", "PP-2", "QQ-1", "QQ-2", "RR-1", "RR-2", "SS-1", "SS-2", "TT-1", "TT-2", "UU-1", "UU-2", "VV-1", "VV-2", "WW-1", "WW-2", "XX-1", "XX-2", "YY-1", "YY-2", "ZZ-1", and "ZZ-2"

A scrutiny of petitioner's 2004 monthly schedules of purchases and corresponding input VAT (both for Head Office and Minesite)[20] and the related suppliers' invoices, receipts, and statements of account[21] reveals that of the P1,885,140.22 claimed input VAT, only the amount of P1,874,876.85 is duly substantiated in accordance with the invoicing requirements under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The remaining amount of P10,263.37 representing claimed input VAT on purchases of services supported by billing statements and non-VAT official receipts shall be disallowed, to wit:

Purchase of services supported by billing statement and non-VAT official receipt

Period	**Exhibit**	**Supplier**	**Input Tax**
1st Quarter	II-1-B-37	Philamlife Insurance	P 717.91
3rd Quarter	II-1-G-14 & II-1-G-16A	Ligon Solis Ilao Law Offices	2,272.73
3rd Quarter	II-1-G-15 & II-1-G-16B	Ligon Solis Ilao Law Offices	7,272.73
		Total	**P 10,263.37**

While petitioner was able to support the claimed amount of P1,874,876.85 with proper VAT invoices/official receipts, the Court finds the same not entirely allowable as input tax credit, considering the BOI Certification[22] submitted by petitioner in an earlier decided case docketed as CTA Case No. 7157, involving its claim for refund of unutilized input VAT for the period covering January 1, 2003 to December 31, 2003.

Pursuant to RMO No. 9-00, sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered entity, whose products are 100% exported, shall be accorded automatic VAT zero-rating subject to certain reportorial and documentary requirements. This treatment is anchored on the "Cross Border

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[20] Exhibits "II-1-A", "II-1-B", "II-1-C", "II-1-D", "II-1-E", "II-1-F", "II-1-G", "II-1-H", "II-1-I", "II-1-J", "II-1-K", and "II-1-L"

[21] Exhibits "II-1-A-1" to "II-1-A-26", "II-1-B-1" to "II-1-B-45", "II-1-C-1" to "II-1-C-36", "II-1-D-1" to "II-D-42", "II-1-E-1" to "II-1-E-41", "II-1-F-1" to "II-1-F-39", "II-1-G-1" to "II-1-G-51", "II-1-H-1" to "II-1-H-23", "II-1-H-25" to "II-1-H-74", "II-1-I-1" to "II-1-I-67", "II-1-J-1" to "II-1-J-58", "II-1-K-1' to "II-1-K-31", "II-1-K-33 to "II-1-K-42", "II-1-K-44" to "II-1-K-47", "II-1-L-1" to "II-1-L-48", and "II-1-L-50" to "II-1-L-53"

[22] Exhibit "S", CTA Case No. 7157

Doctrine" of the VAT system, which in essence means that no value-added tax shall form part of the cost components of products which are destined for consumption outside the territorial border of the Philippines, thus:

> "SECTION 2. *Rationale.* — In Revenue Memorandum Circular No. 74-99, promulgated on October 15, 1999, it has been clarified that sales of goods, property and services made by VAT-registered suppliers to PEZA-registered enterprises shall qualify for zero-rating pursuant to the provisions of Section 106(A)(2)(a)(5) of the National Internal Revenue Code of 1997, in relation to Section 23 of R A. No. 7916 (the PEZA Law) and Article 77(2) of Executive Order No. 226 (the Omnibus Investments Code of 1987). **This treatment is anchored on the *'Cross Border Doctrine'* of the VAT System, which in essence means that no value-added tax shall form part of the cost component of products which are destined for consumption outside of the territorial border of the Philippines. This principle is achieved through the application of VAT zero-rating on products exported from the Philippines to foreign countries.** Furthermore, Article 25 of the Omnibus Investments Code provides, among others, that products sold *'to bonded manufacturing warehouses of export-oriented manufacturers* shall be considered *'constructively exported'* while Section 106(A)(2)(a)(5) NIRC of 1997, provides for the application of zero rating to *'those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.'*
>
> **The rationale of RMC 74-99 may also find application to sales made by VAT registered suppliers to BOI-registered enterprises whose manufactured products are 100% exported to foreign countries and therefore said sales can likewise be accorded automatic zero-rating treatment.**" (*Emphasis supplied*)
>
> "SECTION 3. ***Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating,*** *i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
> (2) The BOI-registered buyer must likewise be VAT-registered;
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108-1(5) of R.R. No. 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer."

In compliance with the afore-quoted provision of Section 3(3) of RMO No. 9-00, petitioner was issued a Certification by the BOI[23], attesting to the fact that petitioner is a BOI-registered entity with 100% exports. The Certification was valid for the period covering March 10, 2004 to December 31, 2004. Under Section 3(4) of said RMO No. 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner, covering the period from March 10, 2004 to December 31, 2004. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner.

Due to the absence of sufficient proof that petitioner's local suppliers did not avail of VAT zero-rating on their sales to petitioner, petitioner cannot claim input tax credits on its domestic purchases for the period covering March 10, 2004 to December 31, 2004. Petitioner may only claim input tax credits on its domestic purchases of goods/services for the period covering January 1, 2004 to March 9, 2004 in the amount of P537,645.43, detailed as follows:

Input VAT Claim Per Summary Lists of Purchases	**Amount**
January	
Headoffice (Exhibit II-1-A)	P 50,456.04
Minesite (Exhibit II-2-A)	184,434.36
	P 234,890.40

[23] Exhibit "S", CTA Case No. 7157

	February				
	Headoffice (Exhibit II-1-B)				P 25,954.61
	Less: Not properly substantiated Input VAT				(717.91)
	Minesite (Exhibit II-2-B)				100,740.09
					P 125,976.79
	March 1-9, 2009 (Exhs. II-1-C & II-2-C)				
			Invoice		
	Supplier	Exhibit	Date	No.	
	Came-Well Marketing, Inc.	II-1-C-1	1-Mar-04	42418	P 383.05
	Grand Asia Metal Corporation	II-1-C-3	4-Mar-04	4031	11,420.00
	Global Measurements & Technology	II-1-C-5	2-Mar-04	032	3,171.21
	Kubota Agro-Indu'l Machinery Phils., Inc.	II-1-C-7	9-Mar-04	20853	3,487.58
	Onih Parts	II-1-C-17	2-Mar-04	5284	553.64
	Rocal Electro Trade	II-1-C-19	3-Mar-04	1116	260.82
	Versatron Marketing & Service Corp.	II-1-C-31	2-Mar-04	7590	393.18
	Youngbros Parts	II-1-C-33	4-Mar-04	58104	2.73
	Maxima Equipment Corporation	II-2-C-2	27-Feb-04	0031	1,708.90
	Maxima Equipment Corporation	II-2-C-3	27-Feb-04	0033	1,105.00
	Maxima Equipment Corporation	II-2-C-4	27-Feb-04	0034	26,753.36
	Maxima Equipment Corporation	II-2-C-5	27-Feb-04	0035	27,142.82
	Maxima Equipment Corporation	II-2-C-6	27-Feb-04	0036	4,716.73
	Maxima Equipment Corporation	II-2-C-7	27-Feb-04	0037	4,127.14
	Maxima Equipment Corporation	II-2-C-8	27-Feb-04	0038	181.59
	Maxima Equipment Corporation	II-2-C-9	1-Mar-04	0039	1,882.36
	Maxima Equipment Corporation	II-2-C-10	5-Mar-04	0041	171.55
	Maxima Equipment Corporation	II-2-C-11	5-Mar-04	0063	751.09
	Maxima Equipment Corporation	II-2-C-12	4-Mar-04	0059	2,519.37
	Maxima Equipment Corporation	II-2-C-13	5-Mar-04	0062	4,204.55
	Maxima Equipment Corporation	II-2-C-14	4-Mar-04	0058	6,754.41
	Maxima Equipment Corporation	II-2-C-15	2-Mar-04	0045	3,778.49
	Maxima Equipment Corporation	II-2-C-16	2-Mar-04	0046	4,562.95
	Maxima Equipment Corporation	II-2-C-17	2-Mar-04	0047	7,510.14
	Maxima Equipment Corporation	II-2-C-18	2-Mar-04	0048	1,762.88
	Maxima Equipment Corporation	II-2-C-19	2-Mar-04	0049	1,072.55
	Maxima Equipment Corporation	II-2-C-20	2-Mar-04	0050	2,074.77
	Maxima Equipment Corporation	II-2-C-21	2-Mar-04	0051	5,689.18
	Maxima Equipment Corporation	II-2-C-22	2-Mar-04	0052	6,209.64
	Maxima Equipment Corporation	II-2-C-23	2-Mar-04	0053	2,558.50
	Maxima Equipment Corporation	II-2-C-24	2-Mar-04	0054	4,548.27
	Maxima Equipment Corporation	II-2-C-25	2-Mar-04	0055	1,288.14
	Maxima Equipment Corporation	II-2-C-26	3-Mar-04	0056	26,866.18
	Maxima Equipment Corporation	II-2-C-27	5-Mar-04	0065	381.73
	Maxima Equipment Corporation	II-2-C-28	5-Mar-04	0066	1,633.55
	Maxima Equipment Corporation	II-2-C-29	5-Mar-04	0068	386.36
	Maxima Equipment Corporation	II-2-C-30	6-Mar-04	0069	1,795.05
	Maxima Equipment Corporation	II-2-C-31	9-Mar-04	0072	2,968.82
					P 176,778.24
				Total	**P 537,645.43**

Nonetheless, before petitioner can claim a refund of the amount of P537,645.43, it must prove that the same was not applied against any output tax liability.

As evidenced by its Quarterly VAT Returns for taxable years 2004[24] and 2005[25], petitioner had no output tax liability against which the claimed input VAT may be applied or credited. While petitioner carried over its excess input VAT for taxable year 2004 to the succeeding quarters of 2005, the same remained unutilized until it was fully deducted as "VAT Refund/TCC claimed" in the fourth quarter of 2005[26]. Hence, the subject claim no longer formed part of the excess input VAT of P8,758,385.02 as of the fourth quarter of 2005, which was to be carried over/applied to the succeeding first quarter of 2006.

Finally, as to whether or not the subject claim was timely filed, it has been held that the reckoning of the two-year prescriptive period for the filing of VAT refund claim starts from the date of filing of the corresponding quarterly VAT returns.[27] The earliest quarter covered by the subject claim is the first quarter ending March 31, 2004, for which petitioner filed its VAT Return on April 20, 2004[28]. Counting from this date, petitioner had until April 20, 2006 within which to file its claim, administratively and judicially. Thus, the administrative claim filed on December 28, 2005[29], as well as the Petition for Review filed on March 31, 2006, fell within the two-year prescriptive period and the 120-day period provided under Section 112(d) of the NIRC of 1997.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND**

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[24] Exhibits "N" to "N-3", "R to "R-3", "V" to "V-3", "Z" to "Z-3"
[25] Exhibits "JJ" to "JJ-4", "KK" to "KK-4", "LL" to "LL-4", and "MM" to "MM-4"
[26] Exhibit "MM-1", line 23D
[27] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007
[28] Exhibits "M", "M-1", "M-2", and "M-3"
[29] Exhibits "AA" to "AA-1"

in favor of petitioner the amount of **FIVE HUNDRED THIRTY SEVEN THOUSAND SIX HUNDRED FORTY FIVE PESOS AND 43/100 (P537,645.43)**, representing its unutilized input VAT for the period covering January 1, 2004 to March 9, 2004.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division