REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1321 (CTA CASE No. 8669)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and RINGPIS-LIBAN, *JJ.*
-versus-	
PHIL. GOLD PROCESSING & REFINING CORP., *Respondent.*	Promulgated: OCT 28 2016 2:44 p.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for Decision of this Court En Banc is a Petition for Review filed by the Commissioner of Internal Revenue under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1]*, as amended,* seeking the

---

[1] RULE 8, Sec 3. *Who may appeal; period to file petition.-*

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

xxx xxx xxx

G

nullification of the Decision[2] dated March 26, 2015 and the Resolution[3] dated May 26, 2015, partially granting herein respondent's claim for refund in the reduced amount of P71,347,100.87, allegedly representing unutilized excess input value-added tax (VAT) attributable to its zero-rated sales for the first and second quarters of fiscal year ending June 30, 2011, the dispositive portions of which, respectively read as follows:

> Decision dated March 26, 2015:
>
> "**WHEREFORE** premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **P71,347,100.87** representing petitioner's unutilized or unapplied creditable input taxes for the period July 1 to December 31, 2010.
>
> **SO ORDERED."**
>
> Resolution dated May 26, 2015:
>
> "**WHEREFORE**, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

The factual antecedents, as found in the records[4] of this case are read as follows:

> Petitioner (now respondent) Phil. Gold Processing & Refining Corp., (Phil. Gold) is a domestic corporation duly organized and existing under Philippine laws with business address at 3rd Floor, Corinthian Plaza Building, 121 Paseo de Roxas, Legaspi Village, Makati City. It is in the business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and

---

[2] Penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Juanito C. Castaneda and Associate Justice Amelia Cotangco-Manalastas, En Banc Docket, pp. 10-32.
[3] Id., pp. 34-39.
[4] Second Division Decision, En Banc Docket, pp.33-47.

C

beneficiating mineral resources, in particular gold and silver dore. It is registered with the Bureau of Internal Revenue as Value-Added Taxpayer with Tax Identification No. 004-498-686-000 issued on March 15, 1996. Petitioner is likewise registered with the Board of Investments (BOI) with a non-pioneer status as a "New Producer of Gold and Silver Dore" under Certificate of Registration No. 2008-042 issued on February 7, 2008. It exports one Hundred Percent (100%) of its processed gold and silver ore.

On the other hand, respondent (now petitioner) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with the power and authority to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the 4th floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 27, 2011, petitioner filed with the BIR its amended Quarterly Value Added Tax Returns for the first and second quarter of the fiscal year ended in June 30, 2011, showing creditable input VAT it paid on account of its various importations of goods with the following amount:

Taxable Quarter (FY ending June 30, 2011)	**Creditable Input VAT**
1st Quarter	P36,748,544.39
2nd Quarter	P37,106,976.00

In a letter dated July 8, 2009, petitioner sought the BIR's confirmation that the input VAT on its purchases of goods and services, including input VAT on importation of capital equipment, attributable to zero-rated sales can be claimed as tax credit or refund pursuant to Section 112 of the NIRC, as amended.

In BIR Ruling No. DA (VAT-073) 435-2009 dated August 3, 2009, respondent through

ɕ

Assistant Commissioner James H. Roldan, confirmed petitioner's entitlement to claim tax credit or refund.

Accordingly, on September 25, 2012, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF One-Stop Shop) two (2) Applications for Tax Credits/Refunds (BIR Forms 1914). The claim amounted to P73,855,520.39, representing petitioner's unused input VAT paid for the first and second quarters of fiscal year ended in June 30, 2011. However, they were unaccompanied by a separate written claim for refund.

Due to inaction of respondent to resolve its administrative claim for refund, petitioner filed the instant Petition for Review on July 4, 2013.

Within the extended time granted by the court, respondent filed her Answer on August 28, 2013, interposing the following special and affirmative defenses:

> Petitioner is not entitled to claim for refund or tax credit for failure to file a written claim for refund. Section 204 of the National Internal Revenue Code of 1997, as amended requires that the taxpayers should file in writing with the Commissioner a claim for credit or refund, within two (2) years after payment of tax. The law reads:
>
> > SEC. 204. Authority of the Commissioner to Compromise, Abate, Refund or Credit Taxes – The Commissioner may-
> >
> > xxx xxx xxx
> >
> > (C) Credit or refund taxes erroneously or illegally received or penalties imposed without

> authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files** in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (emphasis supplied)
>
> xxx xxx xxx

Petitioner claims for refund on input VAT on its purchases or importation of various goods to be used in its operations or production of gold/silver bullions, attributable to zero-rated sales. Pursuant to Section 112 of the National Internal Revenue Code of 1997, VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales within two (2) years after the close of the taxable quarter when the sales were made.

> ***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 sales were made, apply for the

a

> 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 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 sale and also 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.
>
> xxx xxx xxx

Petitioner instead submitted only BIR Form No. 1914. Absent a written claim for refund, the Commissioner of Internal Revenue will not be able to act on petitioner's claim for refund. There being no written claim which categorically demands a refund, BIR Form No. 1914 cannot be considered a claim for refund, consequently, the two (2)-year period within which to file a claim for refund has prescribed.

Assuming that petitioner filed a claim for refund in accordance with the requirements of the law, and mere filing of BIR Form No. 1914 can be given due course, still it is not entitled to such claim. Petitioner failed to submit complete documents required under Revenue Memorandum Order No. 53-98 dated June 1, 1998, in relation to Section 112 (C) of the NIRC of 1997. The said

Memorandum Order requires that complete documents must be submitted relevant to substantiate a claim for refund with the Bureau of Internal Revenue.

To support its claim, it is imperative for petitioner to prove and substantiate its claim for refund otherwise, petitioner's claim must fail. Here, petitioner submitted with the Department of Finance (One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center), merely five (5) documents in support of its application for tax refund, way far from the requirements of the law.

xxx xxx xxx

Clearly, the Commissioner of Internal Revenue was deprived of the opportunity to examine, evaluate, and act on petitioner's application for tax refund. Petitioner violated the doctrine of exhaustion of administrative remedies. The doctrine calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. It is settled that non-observance of the doctrine results in lack of cause of action which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.

xxx xxx xxx

A claim for refund is subject to routinary investigation/examination by the BIR. Administrative authority must be given opportunity to decide the matter, to act and correct the errors in the administrative forum.

xxx xxx xxx

In its Petition for Review, petitioner contends that its revenues derived from the export sales of the processed minerals are subject to Value-Added Tax at zero-percent (0%) rate pursuant to Section 108 (B)(1) of the NIRC, as amended. It is a

c

requirement in Section 108 of the NIRC that the recipient of services is doing business outside the Philippines, to be subject to a zero (0%) percent rate. Petitioner, therefore must prove that it rendered services to persons engaged in business conducted outside the Philippines.

xxx xxx xxx

Clearly, it is a requirement for a transaction to qualify for zero-rating under Section 108(B) of the Tax Code, petitioner must specifically prove that the recipient of the service is a non-resident foreign corporation. It is also a requirement that the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations. x x x.

xxx xxx xxx

Failure of the petitioner to prove that it rendered services to a non-resident foreign corporation and that the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations, warrants denial of its claim for refund.

Finally, tax refunds in relation to the VAT are in the nature of tax exemptions. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.

In an action for refund, the burden of proof is on the taxpayer to establish the right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a 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. Failure to comply therewith warrants a

> dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to overcome such burden."

Trial ensued thereafter. During the March 3, 2014 hearing, counsel for CIR manifested that she has not received any report of investigation and that she has no witnesses to present, hence, both parties were ordered to submit their respective memorandum. Phil. Gold submitted its Memoranda on March 25, 2014 while the CIR filed her Memoranda on April 8, 2014. The case was then submitted for decision in a Resolution dated April 15, 2014.

The Court in Division thereafter rendered the assailed Decision dated March 26, 2015, which ruled that Phil. Gold is entitled to a refund in the reduced amount of P71,347,100.87, allegedly representing unutilized excess input value-added tax (VAT) attributable to its zero-rated sales for the first and second quarters of fiscal year ending June 30, 2011.

The CIR's Motion for Reconsideration filed on May 26, 2015 was denied thru the assailed Resolution, hence, this Petition.

We rule to DENY the Petition for Review.

In the instant Petition for Review, petitioner CIR assails that the Court in Division erred in granting Phil. Gold's refund on the ground that it failed to file a written administrative claim for refund as well as submit complete documents to support its claim.

This argument deserves scant consideration. In claims for VAT refund, the law does not categorically require a specific form on how to apply for a tax credit or refund. A close scrutiny of the records would reveal that BIR Form 1914[5] requires the following information:

1. Name of the taxpayer;
2. The amount being claimed for tax credit or refund;
3. Tax type;
4. Period covered;

---

[5] Annex "N" to "N-2", Division Docket, pp. 113-114.

5. Reason for filing of the claim;
6. Printed name; and
7. Signature of the taxpayer or its authorized representative.

Based on the foregoing, the intention of a taxpayer to apply for tax credit or refund can be easily ascertained. By implication, the BIR Form can be considered as the "written claim" for refund itself. Thus, Phil. Gold has sufficiently complied with the requisite provided for under the law.

On another note, the Court also disagrees with the view of the petitioner that Phil. Gold failed to submit complete documents as required under Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1997, in relation to Section 112(C) of the NIRC, as amended. The RMO states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities". There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 that require submission of complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT[6]. Considering that Phil. Gold is not under audit, there is no necessity to submit the documents enumerated under the RMO.

We must also bear in mind that the non-submission of complete supporting documents in the administrative level is not fatal to the taxpayer's judicial claim. It has already been stressed out in the assailed decision that the Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the relevant provisions of the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[7]

---

[6] Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 205055, July 18, 2014.

[7] Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc., CTA EB No. 474, September 1, 2009; Commissioner of Internal Revenue vs. Toledo Power Company, CT A EB No. 589, September 15, 2010; Commissioner of Internal Revenue vs. San Roque Power Corporation, CTA EB No.657, April 4, 2012.

c

As this Court had ruled in *Commissioner of Internal Revenue v. Philippine Airlines*[8] :

> "It has been settled in several CTA *en banc* cases that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund. In the case of *Philippine Bank of Communications* vs. *Commissioner of Internal Revenue* We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:
>
>> **'Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial.** In the case of *CIR* vs. *Manila Mining Corporation,* it was explained that 'Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo,* party litigants should prove every minute aspect of their cases. Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.

Likewise, in *Pilipinas Total Gas, Inc.* v. *Commissioner of Internal Revenue*[9], the Supreme Court dealt with the issue of submission of supporting documents regarding claims for refund for zero-rated transactions, which can be applied, by analogy, to the present case. The relevant discussion in the said case is as follows:

xxx xxx xxx

---

[8] CTA EB No. 775, July 24, 2012.

[9] Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.

C

"x x x for purposes of determining when the supporting documents have been completed - it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms of what additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are actually complete as required by law - is **for the CIR and the courts to determine.**

> Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

In the same vein, petitioner CIR further maintains the position that Phil. Gold's claim for refund of unutilized input VAT should be denied for failure to comply with the requirements provided under the law, and thus the claim for refund or tax credit must necessarily fail.

Section 112(A)[10] of the National Internal Revenue Code (NIRC) of 1997, as amended, provides the following requisites that must be complied with in order to be entitled to a refund or tax credit of unutilized VAT, to wit;

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

Relevantly, such export sales are subject to zero percent (0%) VAT rate under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which provides:

---

[10] SECTION 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."
>
> xxx xxx xxx

"Section. 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);

xxx xxx xxx

Based on the above provisions, the Court in Division already discussed in the assailed Decision the conditions that must be complied with in order for an export sale to qualify as zero-rated. To reiterate, the following must concur:

1. That 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 currency or its equivalent in goods or services; and
4. The payment was accounted for in accordance with the rules and regulations of the BSP.

Significantly, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended, mandate that a VAT taxpayer, like Phil.Gold, shall for every sale, barter, or exchange of goods or properties, issue a VAT invoice, which must contain the following information;

<

Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) ***Invoicing Requirements.*** - A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

(B) ***Information Contained in the VAT Invoice or VAT Official Receipt.*** - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **"zero-rated sale"** shall be written or printed prominently on the invoice or receipt.

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

xxx xxx xxx

"*Section. 4.113-**1. Invoicing Requirements***. -

(A) A VAT-registered person shall issue:-

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT invoice' or 'VAT Official Receipt.' All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. - The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;" (Emphasis supplied)

Incidentally, Section 237[11] in relation to Section 238[12] additionally requires that the invoices or receipts must be

[11] Section. 237. *Issuance of Receipts or Sales or Commercial Invoices.* –

All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service

a

duly registered with the BIR and must contain all the required information under the law and regulations, such as the imprinted words "zero-rated" and the taxpayer's TIN-VAT number.

Based on the afore-quoted provisions, any VAT-registered person claiming VAT-zero rated direct export sales 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 for the goods in acceptable foreign currency or its equivalent in goods and services.

Clearly, only export sales substantiated by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Petitioner CIR contends that Phil. Gold's sales invoices do not comply with the requirements of the law and regulations since the word "zero-rated" found on the sales invoices were not written or printed prominently therein, but was rubber stamped, which is fatal to its case.

This contention is misplaced. A review of Section 113(2)(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, does not make a categorical statement or standard as regards how the term "zero-rated sale" should be "written". Thus, the Court En Banc concedes that

---

xxx xxx xxx

[12] Section 238. *Printing of Receipts or Sales or Commercial Invoices.* –

> All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner." (Emphasis supplied)

ζ

the "rubber stamp" is within the coverage of the term "written" pursuant to the rule on Statutory Construction relative to the jurisprudentially settled legal maxim ***Ubi Lex Non Distinguit, Nee Nos Distinguire Debemus*** (When the law does not make any distinction, the Court must not make any distinction).

The issue on the imprinting of the term "zero-rated sale" on the invoice or receipt is no longer novel. Nonetheless, let us revisit Section 113 (B)(2)(c) of the NIRC of 1997, as amended, and Section 4.113-1(B)(2)(c) of Revenue Regulations (RR) No. 16-05 which provide the invoicing requirements for VAT-registered persons. The provisions state as follows:

> Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> xxx xxx xxx
>
> ***(B) Information Contained in the VAT Invoice or VAT Official Receipt.*** - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **"zero-rated sale"** shall be **written or printed prominently on the invoice or receipt**. (Emphasis supplied)
>
> xxx xxx xxx
>
> *Section. 4.113-**1. Invoicing Requirements**.* -
>
> xxx xxx xxx

c

> **(B) Information contained in VAT invoice or VAT official receipt**. - The following information shall be indicated in VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) VAT, the term **"zero-rated sale"** shall be written **or printed prominently on the invoice or receipt**;" (Emphasis supplied)

Relative to this, as correctly cited by the Court in Division, is the case of *Commissioner of Internal Revenue vs. Toledo Power Company, Inc.*[13], where the Supreme Court categorically ruled that mere stamping of the words "zero-rated" on the VAT invoices/official receipts is sufficient compliance with the law, we reiterate:

> "In the present case, we agree with the CTA's findings that the words "zero-rated" appeared on the VAT invoices/official receipts presented by the TPI in support of its refund claim. **Although the same was merely stamped and not pre-printed, the same is sufficient compliance with the law**, since the imprinting of the word "zero-rated" was required merely to distinguish sales subject to 10°/o VAT, those that are subject to 0°/o VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other VAT provisions of the Tax Code." (Emphasis ours)

In the case at bar, clearly, the term "zero-rated" appears on the face of petitioner's sales invoices, albeit, they are rubber stamped. Considering the foregoing, the

---

[13] Commissioner of Internal Revenue vs. Toledo Power Company, Inc., G.R. No. 183880, January 20, 2014.

ረ

Court En Banc finds that Phil. Gold substantially complied with the requirement that the word "zero-rated" must prominently appear on the face of sales invoices covering zero-rated sales.

A review of the records of this case shows that as proof of its VAT zero-rated direct export sales, Phil. Gold presented the following documents:

1. Zero-rated VAT sales invoices[14],
2. Export documents[15] consisting of:
    a. airway bills,
    b. port declarations,
    c. packing lists, and
    d. provisional invoices,
3. Certification[16] from Hongkong and Shanghai Banking Corporation Limited (HSBC), and
4. Consolidated Bank Statements[17] from and BNP Paribas Corporate & Investment Banking.

From the afore-mentioned documents, the Court Commissioned Independent Certified Public Accountant (ICPA), Atty. Clifford Chua, was able to attribute and verify which direct export sales were substantiated and qualified for zero-rating.

Accordingly, he was also able to establish from these documents the correct amount that should be refunded to Phil. Gold. Based on the examination, the input VAT in the amounts of P51,965.00 and P6,000.00 for the first and second quarters of fiscal year ending in June 30, 2011, respectively, totalling P57,965.00 should be disallowed, and only the remaining input VAT in the respective amounts of P36,696,579.39 and/or P37,100,976.00 in the sum of P73,797,555.39 represent Phil. Gold's valid input VAT. Additionally, since Phil. Gold has export sales with no corresponding foreign currency remittances, only the input VAT amounts of P35,795,256.09 and P35,551,844.78 can be attributed to its valid zero-rated sales in the amount of P2,209,536,351.67 for the first quarter and

---

[14] Division Docket, Exhibits "P16" to "P-16-w"
[15] Division Docket, Exhibits "P-20" to "P-48-b"
[16] Division Docket, Exhibit "P-50"
[17] Division Docket, Exhibit "P-50-a" to "P-50-f"

c

P2,878,728,448.43 for the second quarter of fiscal year ending in June 30, 2011, computed as follows;

First Quarter of FY 2011		
Valid Input VAT		P36,696,579.39
Multiplied by:		
Valid zero-rated sales in PHP	P2,209,536,351.67	
÷Total zero-rated sales/return	P2,265,172,399.93	97.5438493%
Valid Input VAT attributable to valid zero-rated sales for the 1st Quarter of FY 2011		**P35,795,256.09**
Second Quarter of FY 2011		
Valid Input VAT		P37,100,976.00
Multiplied by:		
Valid zero-rated sales in PHP	P2,878,728,448.43	
÷Total zero-rated sales/return	P3,004,165,768.39	95.8245540%
Valid Input VAT attributable to valid zero-rated sales for the 2nd Quarter of FY 2011		**P35,551,844.78**
Total Input VAT attributable to zero-rated sales-First and Second Qtrs of FY 2011		**P71,347,100.87**

In view of the foregoing, the Court finds no cogent reason to reverse or modify the assailed decision.

WHEREFORE, premises considered, the Court En Banc hereby **AFFIRMS** the Decision dated March 26, 2015 and the Resolution dated May 26, 2015. The instant Petition for Review is hereby **DISMISSED** for lack of merit. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)

MA. BELEN M. RINGPIS-LIBAN
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice