Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

HINATUAN MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9287
For: Refund

Members:

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

Promulgated:

MAR 06 2019 1:17pm

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DECISION

MINDARO-GRULLA, J.:

The case involves the Petition for Review[1] filed by Hinatuan Mining Corporation against the Commissioner of Internal Revenue, pursuant to Section 7(a)(2)[2] of Republic Act (RA) No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals", as amended, as well as Section 3(a)(2)[3] of Rule 4 and Section 4(a)[4] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Docket, pp. 10-23.

[2] SEC. 7. *Jurisdiction.* - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

[3] SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

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

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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx;

[4] SEC. 4. *Where to appeal; mode of appeal.* –

Petitioner seeks the refund or issuance of a tax credit certificate in the total amount of Nine Million Four Hundred Sixty Thousand Seven Hundred Twenty Pesos and 30/100 (₱9,460,720.30), allegedly representing unutilized input value-added tax (VAT) on its domestic purchases of goods and services and importation of goods from January 1, 2014 to December 31, 2014, including the VAT on purchases of capital goods exceeding ₱1 Million corresponding to the portion which was amortized in calendar year (CY) 2014.[5]

Petitioner Hinatuan Mining Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 29/F NAC Tower, 32nd Street, Bonifacio Global City, Taguig City.[6] It is registered with the Bureau of Internal Revenue (BIR) as a VAT entity with Certificate of Registration No. OCN8RC0000042880 dated June 30, 1994,[7] and with the Board of Investments (BOI) as an export producer of beneficiated nickel ores with BOI Certificate of Registration No. 80-1193 issued on October 6, 1980.[8]

Petitioner has the following declared primary purpose:[9]

> "To carry on the business, for itself and for others, of mining lode and/or placer mining, developing, exploiting, extracting, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging, shipping, transporting, and otherwise producing and dealing in nickel, gold, silver, copper, lead, zinc, brass, iron, steel, limestone, and all kinds of ores, metals, and minerals and the products and by-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, locate, exchange, lease, acquire and deal in

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[5] Statement of the Case, Pre-Trial Order, Docket, p. 163.

[6] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 129.

[7] Par. 4, Stipulated Facts, JSFI, Docket, p. 131.

[8] Par. 5, Stipulated Facts, JSFI, Docket, p. 131.

[9] Par. 3, Stipulated Facts, JSFI, Docket, p. 130.

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lands, mines, and mineral rights and claims and to conduct all business appertaining thereto; to purchase, locate, lease or otherwise acquire, mining claims and rights, timber rights, water rights, concessions and mines, buildings, dwellings, plants machinery, spare parts, tools and other properties whatsoever which this corporation may from time to time find to be to its advantage, to mine and market any mineral or other products that may be found in or on such lands, and to explore, work, exercise, develop or turn to account the same; and to acquire, develop and utilize water rights in such manner as may be authorized or permitted by law; to purchase, hire, make, construct or otherwise, acquire, provide, maintain, equip, alter, erect, improve, repair, manage, work and operate private roads, barges, vessels, aircraft and vehicles, private telegraph and telephone lines, and other communication media, as may be needed by the corporation for its own purpose, and to purchase, import, construct, machine, fabricate, or otherwise acquire, and maintain and operate bridges, piers, wharves, wells, reservoirs, plumes, watercourses, waterworks, aqueducts, shafts, tunnels, furnaces, coke ovens, crushing works, gasworks, electric lights and power plants and compressed air plants, chemical works of all kinds, concentrators, smelters, smelting plants, and refineries, matting plants, warehouses, workshops, factories, dwelling houses, stores, hotels or other buildings, engines, machinery, spare parts, tools, implements and other works, conveniences and properties of any description in connection with or which may be directly or indirectly conducive to any of the objects of the corporation, and to contribute to, subsidize or otherwise aid or take part in any operations."

On the other hand, respondent is the duly appointed Commissioner of the BIR, 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 (NIRC) of 1997, as amended, or other laws administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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On October 8, 2015, petitioner filed with the BIR Large Taxpayers Division a claim for refund of its alleged excess or unutilized input VAT in the amount of ₱1,916,813.22, covering the first (1^{st}) quarter of 2014.[10]

On November 6, 2015, petitioner filed a similar claim covering the second (2^{nd}), third (3^{rd}), and fourth (4^{th}) quarters of 2014 amounting to ₱7,543,907.08.[11]

Meanwhile, on March 3, 2016, the BIR issued a tax credit certificate[12] to petitioner in the amount of ₱3,241,111.16 for the period covering April 1, 2014 to December 31, 2014.

Subsequently, petitioner filed the present Petition for Review before this Court on March 7, 2016.

After several motions for extension, respondent filed his Answer[13] on June 27, 2016, interposing the following special and affirmative defenses:

> **"PETITIONER'S CLAIM FOR VAT REFUND/TAX CREDIT HAS NO FACTUAL AND LEGAL BASES.**
>
> **A. *CLAIM FOR VAT REFUND/TAX CREDIT CERTIFICATE FOR THE FIRST QUARTER OF TAXABLE YEAR 2014 (JANUARY 1, 2014 TO MARCH 31, 2014).***
>
> 5. Petitioner alleged that on 8 October 2015, it filed with respondent a claim for refund of allegedly excess VAT input taxes covering the first quarter of 2014 (January 1, 2014 to March 31, 2014).
>
> 6. However, petitioner's claim for VAT refund/tax credit allegedly representing excess input tax attributable

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[10] Exhibit "P-2-a", Docket, p. 257.
[11] Exhibit "P-1", BIR Records, Folder II, pp. 554 to 557.
[12] Exhibit "P-7-B", BIR Records, Folder II, pp. 600-601.
[13] Docket, pp. 60-72.

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to zero-rated sales for the first taxable quarter of taxable year 2014 was properly denied through a letter served to petitioner on 1 April 2016.

7. In the aforesaid letter of denial, petitioner was informed that after verification of the documents it submitted to support its claim with the Bureau of Internal Revenue (BIR), petitioner failed to show substantial proof of the factual and legal bases of its claim for refund. Hence, the claim for refund/tax credit covering the first quarter of 2014 in the amount of ₱1,916,813.22 was denied.

8. Petitioner alleged that it accumulated creditable input VAT on its local purchases and importation of goods and services including capital goods.

9. For the first quarter of taxable year 2014, petitioner's application for VAT refund/credit of the alleged unutilized input taxes amounted to ₱413,451.18 and ₱1,503,362.04 allegedly representing local and imported purchases, respectively, for a total amount of ₱1,916,813.22.

10. However, per investigation conducted by respondent, the following were disclosed:

> **'A. LOCAL PURCHASES**
>
> Hinatuan Mining Corporation, claim input tax for the 1st Quarter taxable year 2014 from local purchases of goods and services amounting to ₱502,903.96 per VAT Returns and per Summary List of Purchases (SLP).
>
> From the total amount of VAT credit claim from local purchases with supporting documents, the following were disallowed pursuant to Sections 110 and 113 of the Tax Code, as implemented by Sections 4.110-8 and 4.113.1 of RR No. 16-2005, as amended:

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1. **<u>Overclaimed Input Tax – P6,119.44</u>**
   There were some input taxes claimed in excess of the amount reflected per sales per sales invoice/official receipts; thus, disallowed.

2. **<u>Input Tax Allocated to Output Tax - P447,502.59</u>**
   Further computation of input tax on taxable sales as against zero-rated sales showed input tax which should have been allocated to vatable sales. Thus, the same portion of input tax were included as part of the disallowed input tax.

3. **<u>Capital Goods – P49,308.93</u>**
   Verification from the invoices submitted showed various purchases of automobiles which was immediately claimed as part of the input tax credit refund; the same were included as part of the disallowed input tax. Input tax applied for VAT refund attributable to purchase of capital goods whether such are currently or purchase in previous years have been denied for refund in accordance with the provisions of RR No. 16-2005 implementing RA No. 9337 amending Section 112 of the NIRC specifically Subsection B; thus disallowed.

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B. IMPORTATION

Hinatuan Mining Corp. claims input tax for the 1st quarter of TY 2014 from importation of goods amounting to ₱1,820,608.55.

Validation, analysis and evaluation of the Summary List of Importation (SLI), importation document, AITEID data and BOC RAD disclosed that the total input tax of

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₱1,820,608.55 were disallowed pursuant to Sections 110 and 113 of the Tax Code, as implemented by Sections 4. 110-8 and 4.113.1 of RR No. 16-2005, as amended. xxxx'

11. From the foregoing, petitioner's claim for refund/tax credit for the first quarter of taxable year 2014 was properly denied for lack of factual and legal basis.

B. *CLAIM FOR VAT REFUND/TAX CREDIT CERTIFICATE FOR THE SECOND, THIRD AND FOURTH QUARTER OF TAXABLE YEAR 2014 (APRIL 1, 2014 TO DECEMBER 31, 2014).*

12. Further, petitioner alleged that on 6 November 2015, it filed with respondent claim for refund of allegedly excess VAT input taxes covering the second, third and fourth quarters of taxable year 2014 (April 1, 2014 to December 31, 2014).

13. Again, as previously alleged, petitioner claimed that it accumulated creditable input VAT on its local purchases and importation of goods and services including capital goods.

14. Now, for the second, third and fourth quarters of taxable year 2014, petitioner's application for VAT refund/credit of the alleged unutilized input taxes amounted to ₱5,472,768.51 and ₱2,071,138.57, allegedly representing local and imported purchases, respectively, for a total of ₱7,543,907.08.

15. However, petitioner's claim for refund/tax credit for the second, third and fourth quarters of taxable year 2014 was not substantiated, thus should be denied for lack of factual and legal basis.

PETITIONER'S VAT CREDIT CLAIMS WERE DISALLOWED FOR FAILURE TO SUBSTANTIATE ITS CLAIMS.

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16. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. It has been held by the Supreme Court that a claim for refund is not ipso facto granted because the **Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim**.

17. In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to a zero-rated or effectively zero-rated sales, petitioner must prove compliance with the requisites:

1) that there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input taxes are directly 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.

18. Note that in order to prove compliance with the above requisites, it is essential for petitioner substantiate its VAT claim for refund/tax credit in accordance with law and regulations.

19. It can be gleaned that petitioner's VAT credit claims for taxable year 2014 were disallowed for failure to substantiate its claims.

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21. Meanwhile, Section 4.113-1 of RR 16-2005 provides the invoicing requirements for VAT-registered person, to wit:

xxx xxx xxx

22. Petitioner's allegation that it is entitled to refund/tax credit was clearly not provided by sufficient evidence.

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ADMINISTRATIVE CLAIM FOR REFUND IS EXCLUSIVELY COGNIZABLE BY THE COMMISSIONER OF INTERNAL REVENUE THAT IS SUBJECT TO THE EXCLUSIVE APPELLATE JURISDICTION OF THE HONORABLE COURT OF APPEALS.

25. The power of the CIR to decide claims for refund of all internal revenue taxes is enshrined in Section 4 of the Tax Code, viz:

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26. Clearly, the judicial claim for refund/tax credit is not an original action but an appeal from unsuccessful administrative remedy.

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28. Thus, it is expected that only those pieces of evidence presented by petitioner in the administrative claim for refund are the ones to be presented in the judicial appeal to the Honorable Court.

CLAIMS FOR REFUND ARE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND IN FAVOR OF THE GOVERNMENT.

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> 30. xxx Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.
>
> xxx xxx xxx"

The pre-trial conference was initially set on September 22, 2016 but was subsequently reset to January 19, 2017.[14] Respondent's Pre-Trial Brief[15] was filed on September 15, 2016, while petitioner's Pre-Trial Brief[16] was filed on September 20, 2016.

Subsequently, the parties submitted their Joint Stipulation of Facts and Issues[17] on February 8, 2017. On February 15, 2017, the Court issued a Resolution[18] approving the parties' joint stipulations and terminating the pre-trial.

During trial, petitioner presented Mr. Fernando P. Cruz and Ms. Maria Gracia L. Morfe, the Court-commissioned Independent Certified Public Accountant (ICPA), as its witnesses.

Petitioner filed its Formal Offer of Evidence[19] on August 18, 2017. In the Resolution[20] dated January 10, 2018, the Court admitted all the formally offered exhibits of petitioner except for Exhibits "P-1079" and "P-6731-A".

The admitted exhibits of the petitioner are as follows:

Exhibit:	Description:
P-1	Letter claim for refund filed with BIR with Annexes per pp. 554-557 of BIR records.
P-2-A, P-2-B, P-2-C and P-2-D	Duly accomplished BIR Form No. 1914/ Application for Tax Credit or Refund covering the 4 quarters of taxable year 2014.

[14] Order dated September 21, 2016, Docket, p. 107.
[15] Docket, pp. 84-87.
[16] Docket, pp. 98-103.
[17] Docket, pp. 129-132.
[18] Docket, pp. 147.
[19] Docket, pp. 242-256.
[20] Docket, pp. 390-391.

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	Exhibit P-2-A was filed on October 8, 2015 for the 1st quarter of 2014. Exhibit P-2-B was filed on November 6, 2015 for the 2nd quarter of 2014 per p. 59 of BIR records. Exhibit P-2-C was filed on November 6, 2015 for the 3rd quarter of 2014 per p. 546 of BIR records. Exhibit P-2-D was filed on November 6, 2015 for the 4th quarter of 2014 per p. 543 of BIR records.
P-3	A certification from the Department of Finance (DOF) that petitioner has no similar, previous and/or outstanding application for tax credit or refund and duty drawback with the DOF per p. 403 of BIR records.
P-4	A certification from the Bureau of Customs (BOC) that the BOC has not issued any refund for VAT to petitioner per p. 404 of BIR records.
P-5	Certification of Security Bank dated January 9, 2015 as to the amount of US$113,331,367.28 of inward and export remittances they received for petitioner in CY 2014.
P-6	Certified reproduced copy of the certification issued by the BOI pursuant to RMO 9-2000 and transmitted to the Commissioner of Internal Revenue certifying that petitioner exported 100% of its sales volume in the year 2014.
P-7	Letter-reply from the BIR Large Taxpayers Service Division for petitioner's claim of input taxes amounting to 7,543,907.08 pesos.
P-7-A, P-7-B	Authority to issue Tax Credit Certificate in the amount of 3,241,111.16 pesos (BIR) and in the amount of 2,013,594.06 pesos (BOC); and BIR Tax Credit Certificate in the amount of 3,241,111.16 pesos per pp. 601-602 of BIR records.
P-8	Petitioner's Audited Financial Statements for the year end December 31, 2014.
P-9	Petitioner's 2014 Annual Income Tax Return (with comparative figures for 2013) as filed with the BIR.
P-10 and p-10-A	Signed Judicial Affidavit of Mr. Fernando P. Cruz
P-11 and P-11-A	Signed Judicial Affidavit of Ms. Maria Garcia L. Morfe.
P-12, P-12-a and P-12-b	Report of the Independent CPA consisting of bound documents with a cover page, a 3-page table of contents, a 2-page cover letter addressed to the CTA First Division dated May 15, 2017, a 19-page report, and an attached CD containing relevant and necessary to complement the report.

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P-13 to P-42	Petitioner's SEC, BOI and BIR registrations which are among the documents reviewed by the Independent CPA contained in Exhibit "P-12-b".
P-43 to P-53	Copy of petitioner's Income Tax Return for calendar year 2014 contained in Exhibit "P-12-b".
P-54 to P-133	Copy of petitioner's Audited Financial Statements for calendar year 2014 contained in Exhibit "P-12-b".
P-134 to P-1460 *(except for P-1079)*	Summary of Zero-Rated Sales for the Taxable Year 2014 contained in Exhibit "P-12-b".
P-1461 to P-1537	Summary of Other Zero-Rated Sales for the Taxable Year 2014 contained in Exhibit "P-12-b".
P-1538 to P-2367-B	Documents in support of domestic purchases which form part of the voluminous documents reviewed by the independent CPA and contained in Exhibit "P-12-b".
P-2368 to P-2375	Copy of Petitioner's VAT returns for calendar year 2014 contained in Exhibit "P-12-b".
P-2375A to P-2375B	Copy of petitioner's VAT return for the 1st quarter of 2015 contained in Exhibit "P-12-b".
P-2376 to P-2385	BOI certification of the petitioner's BOI registered customers contained in Exhibit "P-12-b".
P-2386 to P-2436	Import documents which form part of the voluminous documents reviewed by the independent CPA contained in Exhibit "P-12-b".
P-2437 to P-2472 and P-2473 to P-3668	Copy of petitioner's VAT returns for calendar year 2013; and Summary of Zero-Rated Sales for the Taxable Year 2013 contained in Exhibit "P-12-b".
P-3668-1 to P-3668-3	Petitioner's credit advice reconciliation for calendar year 2013 contained in Exhibit "P-12-b".
P-3669 to P-3707 and P-3708 to P-4652	Copy of petitioner's VAT returns for calendar year 2012; and Summary of Zero-Rated Sales for the Taxable Year 2012 contained in Exhibit "P-12-b".
P-4652-1	Petitioner's credit advice reconciliation for calendar year 2012 contained in Exhibit "P-12-b".
P-4653 to P-4688 and P-4689 to P-5799	Copy of petitioner's VAT returns for calendar year 2011; and Summary of Zero-Rated Sales for the Taxable Year 2011 contained in Exhibit "P-12-b".
P-5799-1	Petitioner's credit advice reconciliation for calendar year 2011 contained in Exhibit "P-12-b".
P-5800 to P-5832 and P-5833 to P-6731	Copy of petitioner's VAT returns for calendar year 2010; and Summary of Zero-Rated Sales for the Taxable Year 2010 contained in Exhibit "P-12-b".
P-6731-2	Petitioner's credit advice reconciliation for calendar year 2010 contained in Exhibit "P-12-b".
P-6732 to P-6742	Schedule of Domestic Purchases which form part of the voluminous documents reviewed by the independent CPA for the taxable years 2010, 2011, 2012, and 2013 contained in Exhibit "P-12-b".

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P-6743 to P-6809	Schedule of Importations which form part of the voluminous documents reviewed by the independent CPA for the taxable years 2010, 2011, 2012, and 2013 contained in Exhibit "P-12-b".

On the other hand, respondent's counsel manifested that she will no longer present any evidence; thus, the parties were given thirty (30) days to file their respective memoranda.

Considering the filing of respondent's Memorandum[21] on February 15, 2018 and petitioner's failure to file its memorandum per Records Verification Report[22] issued by the Court's Judicial Records Division, the Court declared the case submitted for decision on March 21, 2018.[23]

The parties submitted the following issue[24] for this Court's resolution:

> Whether petitioner is entitled to a refund or tax credit of the amount of Nine Million Four Hundred Sixty Thousand Seven Hundred Twenty and 30/100 Pesos (₱9,460,720.30) on the alleged excess/unutilized VAT input taxes for taxable year 2014.

Pertinent to the resolution of the instant case are Sections 112(A) and (C) of the Tax Code, which provide:

> "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

[21] Docket, pp. 398-408.
[22] Docket, p. 409.
[23] Docket, p. 412.
[24] Issue, JSFI, Docket, p. 131.

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sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, 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.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the provisions above, in order to be entitled to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be met:

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

The Court shall first resolve the question of timeliness of the filing of petitioner's claim for refund to determine whether this Court has acquired jurisdiction over the case.

Petitioner timely filed its administrative and judicial claims for refund or tax credit

Pursuant to the afore-quoted Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. The following are the pertinent dates relative to petitioner's filing of its administrative claim:

<table>
<tr><th>Taxable Quarter</th><th>Close of the Taxable Quarter</th><th>End of the 2-yr period to file Administrative Claim</th><th>Filing of the Administrative Claim</th><th>Exhibit</th></tr>
<tr><td>1st Qtr of 2014</td><td>Mar. 31, 2014</td><td>Mar. 31, 2016</td><td>October 8, 2015</td><td>P-2-a[25]</td></tr>
<tr><td>2nd Qtr of 2014</td><td>Jun. 30, 2014</td><td>Jun. 30, 2016</td><td rowspan="3">November 6, 2015</td><td>P-1[26]; P-2-B[27]</td></tr>
<tr><td>3rd Qtr of 2014</td><td>Sep. 30, 2014</td><td>Sep. 30, 2016</td><td>P-1; P-2-C[28]</td></tr>
<tr><td>4th Qtr of 2014</td><td>Dec. 31, 2014</td><td>Dec. 31, 2016</td><td>P-1; P-2-D[29]</td></tr>
</table>

Based on the above table, petitioner's administrative claims for the four quarters of CY 2014 were timely filed.

[25] Docket, p. 257.
[26] BIR Records, Folder II, pp. 554 to 557.
[27] BIR Records, Folder II, p. 549
[28] BIR Records, Folder II, p. 546.
[29] BIR Records, Folder II, p. 543.

Anent the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides that the Commissioner of Internal Revenue (CIR) has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for refund or tax credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the Court of Tax Appeals within 30 days.

As for the claim covering the 1st quarter of CY 2014, records show that petitioner submitted its supporting documents per Checklist of Mandatory Requirements for Claims for VAT Credit/Refund labeled as Annex "A"[30] upon filing of its administrative claim on October 8, 2015 and executed a Sworn Certification[31] attesting to the completeness of the submitted documents. Accordingly, respondent had 120 days from October 8, 2015, or until February 5, 2016 to decide on petitioner's claim. Considering that respondent did not act on petitioner's claim on or before February 5, 2016, the latter had until March 7, 2016[32], the last day of the 30-day period, within which to file its appeal before this Court. Evidently, petitioner's judicial claim covering the 1st quarter of CY 2014 filed on March 7, 2016 is well within the period prescribed by law.

As regards petitioner's claim covering the 2nd to 4th quarters of CY 2014, from the filing of petitioner's administrative claim, together with the supporting documents, on November 6, 2015, respondent had 120 days or until March 5, 2016 to act on the said claim. Since respondent acted on the claim by issuing a tax credit certificate on March 3, 2016[33], petitioner had 30 days or until April 4, 2016[34] within which to file a judicial claim before this Court. Clearly, petitioner's judicial claim covering the 2nd to 4th quarters of CY 2014 filed on March 7, 2016 is also well within the period prescribed by law.

The Court shall now discuss petitioner's compliance with the other requisites.

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[30] BIR Records, Folder I, p. 324.
[31] BIR Records, Folder I, p. 323
[32] March 6, 2016 being a Sunday.
[33] Exhibit "P-7-B", BIR Records, Folder II, pp. 600-601.
[34] April 2, 2016 being a Saturday.

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Petitioner is a VAT-registered entity

It is undisputed that petitioner is registered with the Bureau of Internal Revenue as a VAT entity, with Certificate of Registration No. OCN 8RC0000042880 duly issued by respondent on June 30, 1994.[35]

Petitioner is engaged in zero-rated or effectively zero-rated sales

Petitioner asserts that since it is a VAT-registered entity whose export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, it follows that its sales are subject to zero percent (0%) rate pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "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

[35] Par. 4, JSFI, Docket, p. 131; Exhibit "P-42", CD Exhibit.

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accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"

Pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1) and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:

1. Sales Invoice as proof of sale of goods;
2. Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. 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.

Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, are quoted hereunder for easy reference:

"SEC. 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);

(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" *(Emphasis supplied)*

"SEC. 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)*

Moreover, the sales invoices supporting the export sales must be duly registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices*. – All persons subject to an internal revenue tax shall, for each sale and 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. xxx" *(Emphasis supplied)*

"SEC. 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."

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

In petitioner's Quarterly VAT Returns for the four quarters of CY 2014, petitioner declared zero-rated sales in the total amount of ₱5,122,099,168.01, with the following details:

Exhibit	Period Covered (CY 2014)	Zero-rated Sales
"P-2368 to P-2369"	1st Quarter	₱ 22,751,515.29
"P-2370 to P-2371"	2nd Quarter	1,492,768,009.24
"P-2372 to P-2373"	3rd Quarter	2,854,730,981.02
"P-2374 to P-2375"	4th Quarter	751,848,662.46
Total		**₱5,122,099,168.01**

In support of its declared zero-rated sales for CY 2014, petitioner submitted various export sales documents,[36] such as, invoices, bank credit advices, bills of lading, ore transport permits, statements of facts, export declarations, certificates of weight, mate's receipts and mineral ore export permits, which were examined by the Court-commissioned ICPA, Ms. Maria Gracia L. Morfe.

Based on the ICPA report, petitioner's zero-rated sales were derived from the following zero-rated activities:[37]

Export Sale of Ore	Schedule V of Exhibit "P-12"	₱ 5,051,718,887.93
Other Income subject to 0% VAT	Schedule VI of Exhibit "P-12"	70,380,302.29
Total		**₱5,122,099,190.22**[38]

[36] Exhibits "P-134" to "P-1460".
[37] Exhibit "P-12", p. 7, Docket, p. 369.
[38] With ₱22.21 difference against zero-rated sales per VAT Return.

Upon verification, the Court finds that the export sales of ore in the total amount of ₱5,051,718,887.93 are duly supported by export sales documents, thus, qualified for VAT zero-rating.

As to the alleged other income subject to 0% VAT, the ICPA ascertained that the same represents petitioner's rental and selling income to its BOI-registered customers.

Relative thereto, petitioner presented the Certifications[39] issued by the BOI to prove that Rio Tuba Nickel Mining Corp., Cagdianao Mining Corp., Taganito Mining Corp. and Krominco Inc. are BOI-registered entities with 100% export sales. Further, to substantiate the alleged other income subject to 0% VAT, petitioner presented the Credit/Debit Memos and Statement of Accounts[40], as well as the sales invoice[41], it issued to the aforesaid BOI-registered entities.

The Court, however, finds that only the sale of spare parts amounting to ₱756,818.47 is duly substantiated by zero-rated sales invoice. On the other hand, the remaining amount of ₱69,623,483.82 (₱70,380,302.29 less ₱756,818.47) pertains to sale of services, zero-rated official receipts and not mere Credit/Debit Memos and Statement of Accounts should have been submitted in support thereof, as required by the VAT law and regulations. Without proper zero-rated official receipts, the amount of ₱69,623,483.82 cannot qualify for VAT zero-rating.

As a result, only the sales in the amount of ₱5,052,475,684.19 qualify for VAT zero-rating, as computed below:

Zero-rated sales per VAT Returns	₱ 5,122,099,168.01
Less: Other income not supported by zero-rated official receipts	69,623,483.82
Valid Zero-Rated Sales	**₱5,052,475,684.19**

[39] Exhibits "P-2376" to "P-2378", "P-2379" to "P-2380", "P-2381" to "P-2383", and "P-2384" to "P-2385".
[40] Exhibit "P-1461" to "P-1533".
[41] Exhibit "P-1537".

Petitioner had no excess input VAT

In its Quarterly VAT Returns for CY 2014, petitioner declared input VAT on purchases of goods and services in the total amount of ₱13,613,381.38, of which the amount of ₱9,460,720.30 is the subject of the instant claim for refund or issuance of TCC, to wit:

Particulars	1st Quarter P-2368 to P-2369	2nd Quarter P-2370 to P-2371	3rd Quarter P-2372 to P-2373	4th Quarter P-2374 to P-2375	Total
Input tax deferred on Capital Goods Exceeding ₱1M from previous quarter	₱ 22,567,793.58	₱ 23,686,581.68	₱ 45,138,671.93	₱ 42,820,388.98	₱ 134,213,436.17
Add: Input tax on purchase of Capital Goods exceeding P1M	2,990,080.57	24,108,737.43	799,071.42	1,609,906.29	29,507,795.71
Total	₱ 25,557,874.15	₱ 47,795,319.11	₱ 45,937,743.35	₱ 44,430,295.27	₱ 163,721,231.88
Less: Input tax on purchase of Capital Goods exceeding ₱1M deferred for the succeeding period	23,686,581.68	45,138,671.93	42,820,388.98	41,258,000.39	152,903,642.98
Amortization of Input tax on purchases of capital goods exceeding ₱1M	**₱1,871,292.47**	**₱2,656,647.18**	**₱3,117,354.37**	**₱3,172,294.88**	**₱10,817,588.90**
Add: Input taxes on current purchases					
Purchase of Capital Goods not exceeding ₱1M	₱ -	₱ -	₱ -	₱ 115,178.57	₱ 115,178.57
Domestic Purchase of goods other than Capital Goods	-	-	20,937.08	2,018.34	22,955.42
Importation of Goods Other than Capital Goods	-	18,241.00		-	18,241.00
Domestic Purchase of Services	452,247.04	1,838,052.34	215,719.64	133,398.47	2,639,417.49
Total input tax on current purchases other than capital goods exceeding ₱1M	**₱ 452,247.04**	**₱1,856,293.34**	**₱ 236,656.72**	**₱ 250,595.38**	**₱ 2,795,792.48**
Total input taxes for CY 2014	**₱2,323,539.51**	**₱4,512,940.52**	**₱3,354,011.09**	**₱3,422,890.26**	**₱13,613,381.38**
Less: Output VAT	406,726.29	971,214.61	1,306,155.47	1,468,564.71	4,152,661.08
Excess Input VAT	**₱1,916,813.22**	**₱3,541,725.91**	**₱2,047,855.62**	**₱1,954,325.55**	**₱ 9,460,720.30**

A. Amortization of input tax on purchases of capital goods exceeding ₱1 Million - ₱10,817,588.90

The input VAT amortization of ₱10,817,588.90[42] is related to the following purchases:

Particulars	Date	Input VAT	Total Input VAT Amortization
1 Unit 2010 Subaru Forester	26-Jul-10	₱ 187,285.71	₱ 37,457.14
2010 Honda Accord	14-Oct-10	175,714.29	35,142.86
10 Units Volvo Dumptruck	25-May-11	9,260,348.00	1,852,069.60
1 Units Volvo Dumptruck	16-Feb-12	700,981.00	140,196.20
1 Unit Convection Oven	31-May-12	144,796.00	28,959.20
1 Unit Sandvik qe340 Screen	30-Jun-12	1,365,346.00	273,069.20

[42] With ₱0.01 difference.

1 Unit Sandvik q241 Mobile Crusher	30-Jun-12	1,919,901.00	383,980.20
1 Unit Komatsu Hydraulic Excavator	30-Jun-12	2,285,507.00	457,101.40
12 Units Volvo DT	1-Jul-12	10,076,430.00	2,015,286.00
1 Unit Komatsu Hydraulic	10-Aug-12	651,617.00	130,323.40
1 Unit Volvo Grader	1-Aug-12	911,031.00	182,206.20
1 Unit Volvo Back	16-Aug-12	517,789.00	103,557.80
1 Unit Shantui Crawler Dozer	31-Oct-12	1,336,278.00	267,255.60
1 Unit Toyota Hi Lux	10-Dec-12	156,428.57	31,285.71
1 Unit Toyota Hi-Lux 4x4G AT	1-Jan-13	155,785.71	31,157.14
5 Units Volvo DT	30-Apr-13	4,393,495.00	878,699.00
1 Unit Toyota Hi-Ace Commuter	31-Jul-13	134,464.29	26,892.86
1 Unit Toyota Fortuner	5-Aug-13	156,857.14	31,371.43
Brand New Volvo Excavator	17-Jan-14	2,848,652.00	569,730.40
1 Unit Toyota Fortuner	28-Mar-14	141,428.57	23,571.43
Wheel Loader	3-Apr-14	959,356.00	143,903.40
Volvo FMX	10-Jun-14	2,075,583.00	242,151.35
Bureau of Customs	31-May-14	1,010,977.00	134,796.93
La Costa Shipping and Lighterage Co	31-May-14	19,800,000.00	2,640,000.00
Toyota Makati Inc.	30-Jun-14	141,428.57	16,500.00
Toyota Pasong Tamo Inc.	30-Jun-14	121,392.86	14,162.50
Toyota Cubao Inc	31-Jul-14	241,500.00	24,150.00
Toyota Shaw Inc	31-Jul-14	315,000.00	31,500.00
Toyota Global City Inc	31-Aug-14	242,571.42	20,214.29
BT Auto Sport Corp	31-Dec-14	165,952.29	2,765.87
Shimadzu Asia Pacific Pte Ltd	30-Nov-14	225,631.00	7,521.03
Shimadzu Asia Pacific Pte Ltd	30-Nov-14	1,218,323.00	40,610.77
Total		**₱ 64,037,850.42**	**₱ 10,817,588.91**

In support of its input VAT on capital goods exceeding ₱1 Million, petitioner offered in evidence various import documents and invoices.[43] However, upon verification, the Court finds that only the following purchases with corresponding input VAT amortization of ₱4,167,271.24 were duly substantiated:

Exhibit No.	Particulars	Date	Input VAT	Monthly Amort.[44]	No. of Mos. Amort.	Total Input VAT Amortization
Input VAT on Importation of Capital Goods exceeding ₱1M						
"P-6754 to P-6759"	1 Unit Convection Oven	31-May-12	₱ 144,796.00	₱ 2,413.27	12	₱ 28,959.20
"P-6760 to P-6765"	1 Unit Sandvik qe340 Screen	30-Jun-12	1,365,346.00	22,755.77	12	273,069.20
"P-6766 to P-6770"	1 Unit Sandvik q241 Mobile Crusher	30-Jun-12	1,919,901.00	31,998.35	12	383,980.20
"P-6771 to P-6775"	1 Unit Komatsu Hydraulic Excavator	30-Jun-12	2,285,507.00	38,091.78	12	457,101.40
"P-6787 to P-6791"	1 Unit Komatsu Hydraulic	10-Aug-12	651,617.00	10,860.28	12	130,323.40
"P-6783 to P-6786"	1 Unit Volvo Grader	1-Aug-12	911,031.00	15,183.85	12	182,206.20

[43] Exhibits "P-6732" to "P-6809", "P-1680A" to "P-1680B", "P-1857A" to "P-1857I", "P-2158A" to "P-2158K", "P-22367A" to "P-2367B", "P-2386" to "P-2389","P-2391" to "P-2399", "P-2415" to "P-2421A", and "P-2423" to "P-2435A".

[44] Amortized over useful life of 60 months.

"P-6792 to P-6797"	1 Unit Volvo Back	16-Aug-12	517,789.00	8,629.82	12	103,557.80
"P-6798 to P-6800"; "P-6802 to P-6804"	1 Unit Shantui Crawler Dozer	31-Oct-12	1,336,278.00	22,271.30	12	267,255.60
"P-6805 to P-6809"	5 Units Volvo DT	30-Apr-13	4,393,495.00	73,224.92	12	878,699.00
"P-2415 to P-2421A"	Brand New Volvo Excavator	17-Jan-14	2,848,652.00	47,477.53	12	569,730.40
"P-2399 to P-2406"	Wheel Loader	3-Apr-14	959,356.00	15,989.27	9	143,903.40
"P-2386 to P-2389A"	Volvo FMX	10-Jun-14	2,075,583.00	34,593.05	7	242,151.35
"P-2391 to P-2397" and "P-2398"	Bureau of Customs	31-May-14	1,010,977.00	16,849.62	8	134,796.93
"P-2423"; "P-2426 to P-2430"; "P-2435A"	Shimadzu Asia Pacific Pte Ltd	30-Nov-14	225,631.00	3,760.52	2	7,521.03
"P-2424"; "P-2425"; "P-2431 to P-2435A"	Shimadzu Asia Pacific Pte Ltd	30-Nov-14	1,218,323.00	20,305.38	2	40,610.77
	Sub-total					***₱3,843,865.88***
Input VAT on Domestic Purchases of Capital Goods exceeding ₱1M						
"P-6732 to P-6736"	1 Unit 2010 Subaru Forester	26-Jul-10	₱ 187,285.71	₱3,121.43	12	₱ 37,457.14
"P-6737 to P-6738"	2010 Honda Accord	14-Oct-10	175,714.29	2,928.57	12	35,142.86
"P-6739"	1 Unit Toyota Hi Lux	10-Dec-12	156,428.57	2,607.14	12	31,285.71
"P-6740"	1 Unit Toyota Hi-Lux 4x4G AT	1-Jan-13	155,785.71	2,596.43	12	31,157.14
"P-6741"	1 Unit Toyota Hi-Ace Commuter	31-Jul-13	134,464.29	2,241.07	12	26,892.86
"P-6742"	1 Unit Toyota Fortuner	5-Aug-13	156,857.14	2,614.29	12	31,371.43
"P-1680A to P-1680B"	1 Unit Toyota Fortuner	28-Mar-14	141,428.57	2,357.14	10	23,571.43
"P-1857F to P-1857G"	Toyota Makati Inc.	30-Jun-14	141,428.57	2,357.14	7	16,500.00
"P-1857H to P-1857I"	Toyota Pasong Tamo Inc.	30-Jun-14	121,392.86	2,023.21	7	14,162.50
"P-2158A to P-2158E"	Toyota Cubao Inc	31-Jul-14	241,500.00	4,025.00	6	24,150.00
"P-2158F to P-2158H"	Toyota Shaw Inc	31-Jul-14	315,000.00	5,250.00	6	31,500.00
"P-2158I to P-2158K"	Toyota Global City Inc	31-Aug-14	242,571.42	4,042.86	5	20,214.29
	Sub-total					***₱ 323,405.36***
	Total					**₱4,167,271.24**

B. Importation of Goods other than Capital Goods - ₱18,241.00

Part of petitioner's claim for input VAT refund includes the amount of ₱18,241.00. However, as ascertained by the ICPA, the documents provided in support of the same are not original copies, thus, shall be disallowed.

C. Domestic Purchases of Non-Capital Goods and Services - ₱2,777,551.48

As can be gleaned from petitioner's Quarterly VAT Returns, the input VAT amount of ₱2,777,551.48 was derived from the following purchases:

	1st Quarter "P-2368 to P-2369"	2nd Quarter "P-2370 to P-2371"	3rd Quarter "P-2372 to P-2373"	4th Quarter "P-2374 to P-2375"	Total
Domestic Purchases of Capital Goods not exceeding ₱1M				₱ 115,178.57	₱ 115,178.57
Domestic Purchase of goods other than Capital Goods			₱ 20,937.08	2,018.34	22,955.42
Domestic Purchase of Services	₱ 452,247.04	₱ 1,838,052.34	215,719.64	133,398.47	2,639,417.49
Total input tax on purchases of non-capital goods and services	**₱452,247.04**	**₱1,838,052.34**	**₱236,656.72**	**₱250,595.38**	**₱2,777,551.48**

To substantiate the foregoing, petitioner offered in evidence various official receipts and invoices issued by its suppliers of goods and services,[45] which were all examined by the ICPA. The ICPA noted the following exceptions:[46]

Findings	Input VAT Amount
Unsupported purchases	₱ 209,935.73
Without valid supporting documents	219,073.20
Supporting documents are not original	10,379.61
Purchases are not under the correct period	557.14
Input VAT is not properly segregated in the documents	6,600.00
Information on the supporting document is not completely filled out with the name of petitioner, address, TIN, business style	2,242,559.03
Total	**₱2,689,104.71**

The Court agrees with the above-findings of the ICPA. As such, the amount of ₱2,689,104.71 shall be disallowed for petitioner's failure to meet the substantiation requirements provided by law and regulations.

[45] Exhibits "P-1538" to "P-2367-B".
[46] Exhibit "P-12", pp. 374-375.

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Thus, only the amount of ₱88,446.77 (₱2,777,551.48 less ₱2,689,104.71) represents petitioner's valid input VAT on domestic purchases of non-capital goods and services.

However, even if petitioner was able to substantiate its domestic purchases of capital goods exceeding ₱1 Million, the corresponding amortized input VAT of ₱323,405.36, as well as input VAT on domestic purchases of non-capital goods and services in the amount of ₱88,446.77, are not allowable input tax credit.

Pursuant to Revenue Memorandum Order (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 the following reportorial and documentary requirements:

> "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 RR 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the present case, records show that petitioner was issued a Certification[47] by the BOI attesting to the fact that petitioner is a BOI-registered entity with 100% exports.

Under Section 3.4 of 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 January 1, 2014 to December 31, 2014. On the basis of said Certification, no output tax should be shifted by the local suppliers to petitioner. Thus, it follows that petitioner is not entitled to a refund of input VAT from the said domestic purchases.

As held by the CTA *En Banc* in the case of *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue*[48], citing the Decision of the CTA Second Division, petitioner's recourse is not against the government but against the seller who shifted to it the output VAT, to wit:

> "To allow petitioner a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enrich himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr' (Ong Yong, et. al. vs. David S. Tiu, et. al., 375 SCRA 640).* Said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.
>
> In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the

[47] Exhibits "P-6".
[48] CTA EB No. 403 (CTA Case No. 7022), May 29, 2009.

output VAT. *Revenue Memorandum Circular No. 42-03* is clearly instructive on this matter:

> 'In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.'

Pursuant to *Revenue Memorandum Circular No. 42-03*, petitioner's recourse for those purchases of goods and services where it paid VAT is not a claim for refund against the government, or the issuance of a tax credit certificate; but to seek reimbursement of the input VAT paid from its suppliers of goods and services."

The afore-quoted ruling was affirmed by the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[49], holding that the proper party to seek the tax refund or credit should be the suppliers, not Coral Bay.

Thus, only the amortized input VAT of ₱3,843,865.88 arising from importations of capital goods exceeding ₱1 Million represents petitioner's valid input VAT.

However, petitioner's valid input VAT in amount of ₱3,843,865.88 is lower compared to petitioner's output VAT liability for the subject period of claim in the amount of ₱4,152,661.08. Consequently, petitioner still has net output VAT liability of ₱308,795.20, as shown below:

Valid Input VAT		₱ 3,843,865.88
Less: Output VAT		
1st Quarter 2014	₱ 406,726.29	
2nd Quarter 2014	971,214.61	
3rd Quarter 2014	1,306,155.47	
4th Quarter 2014	1,468,564.71	4,152,661.08
Total		**₱(308,795.20)**

[49] G.R. No. 190506, June 13, 2016.

While petitioner's Quarterly VAT Return for the first quarter of taxable year 2014 reflected the amount of ₱4,662,142.55[50] as "Input Tax Carried Over from Previous Period," still, petitioner failed to fully substantiate the same, as only the amortized input VAT on capital goods exceeding ₱1 Million in the amount of ₱3,394,888.33 is supported by invoices, while the output tax due for the same period amounted to ₱19,247,021.58, as shown below:

Exhibit No.	Particulars	Date	Input VAT	Monthly Amort.	No. of Mos. Amort.	Total Input VAT Amortization
CY 2012						
"P-6754 to P-6759"	1 Unit Convection Oven	31-May-12	₱ 144,796.00	₱ 2,413.27	8	₱ 19,306.13
"P-6760 to P-6765"	1 Unit Sandvik qe340 Screen	30-Jun-12	1,365,346.00	22,755.77	7	159,290.37
"P-6766 to P-6770"	1 Unit Sandvik q241 Mobile Crusher	30-Jun-12	1,919,901.00	31,998.35	7	223,988.45
"P-6771 to P-6775"	1 Unit Komatsu Hydraulic Excavator	30-Jun-12	2,285,507.00	38,091.78	7	266,642.48
"P-6787 to P-6791"	1 Unit Komatsu Hydraulic	10-Aug-12	651,617.00	10,860.28	5	54,301.42
"P-6783 to P-6786"	1 Unit Volvo Grader	1-Aug-12	911,031.00	15,183.85	5	75,919.25
"P-6792 to P-6797"	1 Unit Volvo Back	16-Aug-12	517,789.00	8,629.82	5	43,149.08
"P-6798 to P-6800"; "P-6802 to P-6804"	1 Unit shantui Crawler Dozer	31-Oct-12	1,336,278.00	22,271.30	3	66,813.90
sub-total						***₱ 909,411.08***
CY 2013						
"P-6754 to P-6759"	1 Unit Convection Oven	31-May-12	144,796.00	2,413.27	12	₱ 28,959.20
"P-6760 to P-6765"	1 Unit Sandvik qe340 Screen	30-Jun-12	1,365,346.00	22,755.77	12	273,069.20
"P-6766 to P-6770"	1 Unit Sandvik q241 Mobile Crusher	30-Jun-12	1,919,901.00	31,998.35	12	383,980.20
"P-6771 to P-6775"	1 Unit Komatsu Hydraulic Excavator	30-Jun-12	2,285,507.00	38,091.78	12	457,101.40
"P-6787 to P-6791"	1 Unit Komatsu Hydraulic	10-Aug-12	651,617.00	10,860.28	12	130,323.40
"P-6783 to P-6786"	1 Unit Volvo Grader	1-Aug-12	911,031.00	15,183.85	12	182,206.20
"P-6792 to P-6797"	1 Unit Volvo Back	16-Aug-12	517,789.00	8,629.82	12	103,557.80
"P-6798 to P-6800"; "P-6802 to P-6804"	1 Unit Shantui Crawler Dozer	31-Oct-12	1,336,278.00	22,271.30	12	267,255.60
"P-6805 to P-6809"	5 Units Volvo DT	30-Apr-13	4,393,495.00	73,224.92	9	659,024.25
sub-total						***₱ 2,485,477.25***
Total amortized input VAT from prior periods						**₱ 3,394,888.33**
Less: Output VAT						
CY 2012						₱ 964,619.22
CY 2013						18,282,402.36
Total output VAT						***₱ 19,247,021.58***
Amount still due						**₱ (15,852,133.25)**

[50] Exhibit "P-2368" to "P2369", Line 20A.

Consequently, the alleged input tax carry-over of ₱4,662,142.55 cannot be validly applied against petitioner's output tax for CY 2014 pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, to wit:

> "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
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: xxx"

Considering that there is no excess input VAT which may be the subject of a claim for refund or tax credit under Section 112(A) of the NIRC of 1997, as amended, the instant claim must be denied.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[51]

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

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[51] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special First Division