REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION
Petitioner,

- versus -

C.T.A. CASE NO. 5983

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 11 2001

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DECISION

This case involves a claim for refund in the amount of *twelve million seventy six thousand three hundred fifteen pesos and sixty centavos* (P12,076,315.60) allegedly representing unutilized input VAT paid by Petitioner on its domestic purchases of goods/services and importation of capital goods for the period of January 1, 1998 to December 31, 1998.

The facts are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines with address at the 4th Floor, Solid Mills Building, De La Rosa St., Legaspi Village, Makati City. It is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores. It is duly registered with the BIR as a VAT entity with Certificate of Registration No. 94-470-000373 dated June 15, 1994 (Joint Stipulation of Facts & Issues, CTA records, pages 50-51).

Petitioner alleges that for the period January 1, 1998 to December 31, 1998, it generated export sales amounting to P339,403,664.87 which were paid for in acceptable foreign currency inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Petitioner believes that as a VAT registered entity, it is subject to zero-percent VAT on the aforementioned export sales pursuant to Section 106(A)(2)(a)(1) of the Tax Code.

For the same period of January 1, 1998 to December 31, 1998, Petitioner allegedly paid input VAT of P4,954,394.44 on its domestic purchases of goods/services and input VAT of P7,121,921.16 on its importation of capital goods or in the sum of P12,076,315.60.

The alleged zero-rated export sales of P339,403,664.87 and input VAT payments of P12,076,315.60 were reported by Petitioner in its 1998 quarterly VAT returns (Exhibits I, M, Q & U) as follows:

			INPUT VAT		
Exhibit	1998	Zero-rated Sales	Domestic Purchases of Goods/Services	Importation of Goods	Total
I	1st qtr	P 123,444,228.78	P 1,132,456.57		P 1,132,456.57
M (amended)	2nd qtr	38,629,826.95	738,375.08	P 7,121,921.16	7,860,296.24
Q (amended)	3rd qtr	90,259,093.72	1,606,654.71		1,606,654.71
U (amended)	4th qtr	87,070,513.42	1,476,908.08	-	1,476,908.08
	Total:	P 339,403,664.87	P 4,954,394.44	P 7,121,921.16	P 12,076,315.60

Pursuant to Section 112(A) and (B) in relation to Section 106(A)(2)(a)(1) of the Tax Code, Petitioner, on December 27, 1999, filed an administrative claim for refund

(Exhibits HH & II) corresponding to its reported 1998 unutilized input VAT payments of P12,076,315.60 which are allegedly directly attributable to its 1998 zero rated sales of P339,403,664.87.

The instant Petition for Review was filed on December 28, 1999, well within the two-year prescriptive period (Joint Stipulation of Facts & Issues, CTA records, pages 50-51).

In his Answer filed through registered mail on February 4, 2000, Respondent interposed the following Special and Affirmative Defenses:

> "5. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;
>
> 6. Petitioner has not shown proof that the alleged VAT input taxes are attributable to its export sales and that the same have not been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;
>
> 7. The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid;
>
> 8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;
>
> 9. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 10. Well-settled is the rule that claims for refund are construed against the claimants' since it partakes of the nature of an exemption from taxation."

To support its claim, Petitioner submitted voluminous documents and witnesses to identify the same. Respondent, on the other hand, did not present any controverting evidence but merely submitted the case based on the pleadings.

On June 20, 2001, this case was submitted for decision sans the memorandum of Respondent.

The issues We are tasked to resolve have been jointly stipulated by the parties as follows:

a.) Whether or not Petitioner's export sales qualify as zero-rated sales or revenue; and

b.) Whether or not Petitioner is entitled to a refund of VAT input taxes it paid from January 1, 1998 to December 31, 1998 amounting to P12,076,315.60.

(Joint Stipulation of Facts & Issues, CTA records, page 50-51)

After a careful review of the documentary evidence presented as well as the laws, regulations and jurisprudence applicable in this case, We partially rule in favor of Petitioner.

With reference to the issue of whether or not Petitioner's export sales qualify as zero-rated sales, We answer in the affirmative.

Section 106(A)(2)(a)(1) of the Tax Code states, thus:

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

"(A) *Rate and Base of Tax.* –There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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"(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

"(a) Export Sales. – The term 'export sales" means:

"(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Based on the aforequoted provisions of the Tax Code, in order for an export sale to qualify as zero-rated, the following conditions must be present:

1.) there was sale and actual shipment of goods from the Philippines to a foreign country;

2.) the sale was made by a VAT registered person;

3.) the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

4.) the payment was accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

Petitioner proved that it complied with all of the above requisites. The fact that Petitioner is a VAT registered entity is not disputed (Joint Stipulation of Facts & Issues, CTA records, pp. 50-51; Exhibit F). For the period of January 1, 1998 to December 31, 1998, Petitioner actually shipped its products abroad to foreign buyers and generated export sales in the amount of US$8,261,028.54 (Exhibit A-9) with the peso equivalent of P339,403,664.88 (Exhibit A-8) as shown in Petitioner's "Summary List of Export Sales" (Exhibit A-7) and various export documents such as export invoices, export declarations/permits, bills of lading (pre-marked Exhibits D to D-126, inclusive). Likewise, the foreign currency proceeds of US$8,261,028.54 derived from said export sales were inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas as evidenced by the Security Bank Credit Advices (pre-marked Exhibits D to D-126, inclusive).

Considering therefore, that Petitioner's export sales qualify as zero-rated sales, it is not liable to pay output VAT thereon. Accordingly, Petitioner can claim tax credit/refund of the input VAT paid on its domestic purchases of goods/services and importation of capital goods, which are directly attributable to such zero-rated sales as set forth under Section 112(A) & (B) of the Tax Code, to wit:

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

However, in order to be entitled to a refund/tax credit of the alleged input VAT payments of P12,076,315.60, Petitioner must prove that:

1.) both the administrative and judicial claims for refund were filed within two years upon filing of the quarterly VAT return(s) covered by the claim as provided under Section 4-106.2(c) of Revenue Regulations No. 7-95 in relation to Section 112(D) of the Tax Code;

2.) the claimed input VAT payments are directly attributable to zero-rated sales;

3.) the claimed input VAT payments were not applied against any output tax nor carried over to the succeeding month(s)/quart r(s); and

4.) the claimed input VAT payments are duly supported by VAT invoices or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code.

It is an admitted fact that both the administrative and judicial claims for refund were filed within the two-year prescriptive period (Joint Stipulation of Facts & Issues, CTA records pages 50-51).

Petitioner's first quarterly VAT return and amended second, third & fourth quarterly VAT returns for the year 1998 (Exhibits I, M, Q & U) showed that it had no VAT taxable or exempt sales but only zero-rated export sales in the amount of P339,403,664.88. This being the case, all of the 1998 claimed input taxes of P12,076,315.60 are directly attributable to its 1998 zero-rated export sales of P339,403,664.88. In the case of *Babcock-Hitachi (Phils.), Inc. vs. Commissioner of Internal Revenue and the Court of Tax Appeals, CA-G.R. SP No. 40703, dated November 21, 1996*, it was ruled that where Petitioner exports 100% of its products, thus, engaged in purely zero-rated sales, all input taxes incurred on its purchases of goods/services and on capital goods imported or locally purchased are considered directly attributable to its zero-rated sales.

Petitioner established that despite the carry-over of the 1998 claimed input taxes of P12,076,315.60 in its 1999 amended quarterly VAT returns (Exhibits X, AA, DD & GG), the same were not utilized since Petitioner had no output VAT liability for the said year. Moreover, Petitioner deducted the claimed input taxes of P12,076,315.60 as "Any VAT Refund/TCC Claimed " (Line item #28 of Exhibit GG) from the "Total Available Input Tax" of P23,807,276.88 (Line item #27 of Exhibit GG). Thus, the resulting

"Excess Input Tax" of P11,730,961.28 (Line item #30 of Exhibit GG) to be carried over to the succeeding first quarter of 2000 pertains only to Petitioner's declared input VAT payments for 1999 and does not include the 1998 claimed input taxes of P12,076,315.60.

As reported by the commissioned auditing firm, Punongbayan and Araullo, (Exhibit A), out of the 1998 total input VAT payments of P12,075,216.36 (Exhibit A-3) indicated in Petitioner's "Summary of Monthly Purchases" (Exhibit A-2), the input taxes of P416,339.94 (Exhibit A-6) were not properly substantiated by VAT invoices or official receipts. However, a further verification by this Court of the detailed "Summary of Monthly Purchases" (Exhibit A-4) and the various suppliers' invoices/official receipts (pre-marked Exhibits B to B-963 & C to C-1485, inclusive) revealed that aside from the exceptions noted by Punongbayan & Araullo of P416,339.94, the amount of P204,288.07 detailed below also failed to meet the invoicing requirements under Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code:

1998		Supplier	Exhibit	Invoice #	O.R.#	Invoice Amount	Disallowed Input VAT
1.)	Invoices without BIR permit and without V/VAT after TIN; Non-VAT Official Receipts						
Jan	H.O.	NAVSHIP Enter.	B-55; B-56	0020	0016	P 17,268.00	P 1,569.82
Jan	H.O.	NAVSHIP Enter.	B-57; B-56	0019	0016	8,000.00	727.27
Jan	H .O.	NAVSHIP Enter.	B-58; B-59	0017	0014	2,832.00	257.45
Jan	H. O.	NAVSHIP Enter.	B-60; B-61	0022	0017	9,048.00	822.55
May	H. O.	NAVSHIP Enter.	B-360; B-361	0025	0023	24,000.00	2,181.82
May	H. O.	NAVSHIP Enter.	B-362; B-363	0023	0021	28,000.00	2,545.45
July	H. O.	NAVSHIP Enter.	B-524; B-525	0030	0026	90,000.00	8,181.82
July	H. O.	NAVSHIP Enter.	B-526; B-527	0027	0025	90,000.00	8,181.82
Aug	H. O.	NAVSHIP Enter.	B-645; B-646	0031	0028	9,000.00	818.18
May	Minesite	Pilipinas Shell Corp.	C-511; C-513	90497940	49229	97,527.76	8,866.16
May	Minesite	Pilipinas Shell Corp.	C-512; C-513	90503457	49229	142,350.01	12,940.91
June	Minesite	Pilipinas Shell Corp.	C-634; C-637	90530367	60269	97,527.76	8,866.16
June	Minesite	Pilipinas Shell Corp.	C-635; C-637	90537959	62269	143,719.18	13,065.38
June	Minesite	Pilipinas Shell Corp.	C-636; C-638	90559210	60268	97,527.76	8,866.16
July	Minesite	Pilipinas Shell Corp.	C-787; C-788	90580752	60508	97,527.76	8,866.16
July	Minesite	Pilipinas Shell Corp.	C-786; C-788	90580864	60508	171,218.74	15,565.34
July	Minesite	Pilipinas Shell Corp.	C-789; C-791	90605118	60527	97,549.76	8,868.16
July	Minesite	Pilipinas Shell Corp.	C-790; C-791	90605119	60527	3,232.26	293.84
Aug	Minesite	Pilipinas Shell Corp.	C-930; C-933	90627337	60650	97,527.76	8,866.16

Aug	Minesite	Pilipinas Shell Corp.	C-931; C-934	90642181	67223	84,936.17		7,721.47
Aug	Minesite	Pilipinas Shell Corp.	C-932; C-934	90642644	67223	97,527.76		8,866.16
Sept	Minesite	Pilipinas Shell Corp.	C-1083; C-1084	90667490	60737	74,762.17		6,796.56
Sept	Minesite	Pilipinas Shell Corp.	C-1082; C-1084	90668419	60737	97,408.08		8,855.28
Sept	Minesite	Pilipinas Shell Corp.	C-1081; C-1084	90690462	60737	97,527.76		8,866.16
Sept	Minesite	Pilipinas Shell Corp.	C-1080; C-1084	90692101	60737	10,801.67		981.97
Oct	Minesite	Pilipinas Shell Corp.	C-1222; C-1226	90700504	69431	44,053.13		4,004.83
Oct	Minesite	Pilipinas Shell Corp.	C-1223; C-1226	90703221	69431	63,784.16		5,798.56
Oct	Minesite	Pilipinas Shell Corp.	C-1225; C-1226	90722358	69431	99,727.76		9,066.16
Oct	Minesite	Pilipinas Shell Corp.	C-1224; C-1226	90722359	69431	9,290.66		844.61
Nov	Minesite	Pilipinas Shell Corp.	C-1338; C-1340	90774137	75466	60,162.96		5,469.36
Nov	Minesite	Pilipinas Shell Corp.	C-1339; C-1340	90774666	75466	99,727.76		9,066.16
Apr	Minesite	Recon Trading	C-409	0004	0106	5,610.20		510.02
						subtotal:		P 197,197.91

2.) Non-VAT Invoice with stamped VAT# and Official Receipt without V/VAT after TIN

Jan	Minesite	Vocom Enter.	C-126; C-127	046	473	P 33,900.00	P	3,081.82
						subtotal:	P	3,081.82

3.) Non-VAT Invoices/Official Receipts

Oct	H. O.	Joy Eng' g. Enter.	B-792; B-794	6489	1641	P 16,000.00	P	1,454.55
Oct	H. O.	Joy Eng'g. Enter.	B-793; B-794	6490	1641	16,000.00		1,454.55
						subtotal:	P	2,909.10

4.) Discrepancy between the total input taxes as reflected in the summary and the total claimed input taxes

Total Claimed Input Taxes	P 12,076,315.60	
Less: Total Input Taxes per Summary (Exhibit A-3)	12,075,216.36	
Discrepancy		P 1,099.24
	T o t a l:	P 204,288.07

In sum, except for its failure to substantiate by proper VAT invoices or official receipts the amounts of P416,339.94 and P204,288.07 or in the aggregate amount of P620,628.01, this Court finds Petitioner to have sufficiently proven its entitlement to the VAT refund sought for.

WHEREFORE, Petitioner's claim for refund of unutilized input VAT payments for 1998 is hereby **GRANTED** but in a reduced amount of P11,455,687.59 computed as follows:

Claimed Excess Input Taxes		P 12,076,315.60
Less: Disallowances		
1.) Per Report of Punongbayan & Araullo (Exh. A-6)	P 416,339.94	
2.) Per this Court's Further Verification	204,288.07	
		620,628.01
Refundable Excess Input Taxes		P 11,455,687.59

Accordingly, Respondent Commissioner of Internal Revenue is **ORDERED to REFUND** to Petitioner the amount of **ELEVEN MILLION FOUR HUNDRED FIFTY FIVE THOUSAND SIX HUNDRED EIGHTY SEVEN & 59/100 PESOS (P11,455,687.59)** representing unutilized input VAT paid by Petitioner on its domestic purchases of taxable goods/services and importation of capital goods for the period January 1, 1998 to December 31, 1998.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge