REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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FILMINERA RESOURCES CORPORATION, Petitioner,	**CTA Case Nos. 8690 and 8716**
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 22 2016 ; 2:38 p.m.

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DECISION

UY, J.:

This case is a consolidation of two (2) Petitions for Review separately filed by Filminera Resources Corporation on August 8, 2013 and October 4, 2013, seeking the refund or issuance of a tax credit certificate (TCC) in the aggregate amount of ₱106,466,244.56, representing allegedly unutilized or unapplied input value-added tax (VAT) for the periods April 1, 2011 to June 30, 2011 and July 1, 2011 to September 30, 2011, broken down as follows:

CTA Case No.	Period	Amount
8690	April 1, 2011 to June 30, 2011	₱ 78,982,003.52
8716	July 1, 2011 to September 30, 2011	27,484,241.04
	TOTAL	**₱106,466,244.56**

THE FACTS

Petitioner Filminera Resources Corporation is a corporation incorporated under the laws of the Republic of the Philippines.[1] Its Primary Purpose as stated in the Articles of Incorporation is:

> "'To carry on the business of operating coal mines; and of prospecting, exploration and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all other kinds of ores, metals, and minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease option, locate, or otherwise acquire, own, exchange, sell, or otherwise dispose of, pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber lands, water and water rights, and other property, both real and personal'."[2]

It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-153-880-000.[3]

Respondent Commissioner of Internal Revenue is empowered to perform the duties of her office, including, among others, the duty to act upon claims for refund or issuance of TCC as provided by law. She holds office at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On July 5, 2007, petitioner, and Philippine Gold Processing and Refining Corporation (PGPRC), a corporation likewise incorporated under the laws of the Republic of the Philippines[5] and registered with the Board of Investments (BOI)[6], entered into an Ore Sales and Purchase Agreement.[7]

Subsequently, petitioner, thru the BIR's Electronic Filing and Payment System (EFPS), filed its Quarterly VAT Returns for the 4th

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[1] Exhibit "P-3", Docket – Vol. III (CTA Case No. 8690), pp. 1831 to 1844.
[2] Par. 1, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI) and Supplemental JSFI, Docket – Vol. II (CTA Case No. 8690), pp. 1508 and 1524.
[3] Exhibit "P-4", Docket – Vol. II (CTA Case No. 8690), p. 1150.
[4] Par. 2, Summary of Stipulated Facts, JSFI and Supplemental JSFI, Docket– Vol. II (CTA Case No. 8690), pp. 1508 and 1524.
[5] Exhibit "P-7", Docket – Vol. III (CTA Case No. 8690), pp. 1858 to 1870.
[6] Exhibit "P-8", Docket – Vol. III (CTA Case No. 8690), p. 1871.
[7] Exhibit "P-5", Docket – Vol. II (CTA Case No. 8690), pp. 1151 to 1159.

quarter of Fiscal Year (FY) 2011[8] (April 1, 2011 to June 30, 2011) on July 22, 2011, and for the 1st quarter of FY 2012 (July 1, 2011 to September 30, 2011) on June 30, 2012[9].

On March 15, 2013 and May 8, 2013, petitioner separately filed an Application for Tax Credits / Refunds with the BIR's Revenue District Office (RDO) No. 121 (Large Taxpayers Service-Excise) for the issuance of TCC of input VAT for the period April 1, 2011 to June 30, 2011 in the amount of ₱78,982,003.52[10] and for July 1, 2011 to September 30, 2011 in the amount of ₱27,484,241.04[11].

Due to the supposed inaction of respondent, petitioner separately filed two (2) Petitions for Review before this Court on August 8, 2013 and on October 4, 2013, which were respectively docketed as CTA Case No. 8690 and CTA Case No. 8716.

On September 11, 2013, respondent filed her Answer in CTA Case No. 8690[12] interposing the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 5. The amount of P78,982,003.52 allegedly representing unutilized or unapplied creditable input tax for the period 1 April 2011 to 30 June 2011 was not properly documented.
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> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 7. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
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> 8. There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement,

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[8] Exhibit "P-13", Docket – Vol. III (CTA Case No. 8690), pp. 1876 to 1881.
[9] Exhibit "P-14" Docket – Vol. III (CTA Case No. 8690), pp. 1882 to 1886.
[10] Exhibit "P-9", Docket – Vol. II (CTA Case No. 8690), p. 1210.
[11] Exhibit "P-10", Docket – Vol. II (CTA Case No. 8690), p. 1213.
[12] Docket – Vol. II (CTA Case No. 8690), pp. 784 to 792.

otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R.* 145526, *16 March 2007:*

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**.' (emphasis and underscoring supplied)

The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX
(For audit involving Claim for Refund / TCC)

A.) Requirements from Taxpayer

I. Requirements mention in Annex B

II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/Refund'
2) Summary List of Local Purchases specifying the following:

xxx xxx xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation- for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from the BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any
    a) current year/period
    b) previous year/period
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable
8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
11) Sample invoice / s for 'Export/Exempt Sales', if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Far from complying with the checklist of requirements, petitioner merely alleged in the petition for review that it submitted complete documents in support of its administrative claim for refund. This is not a claim for erroneously or illegally collected taxes where petitioner has the discretion of choosing the evidence it deems fit to prove its case. This is a claim for excess but legally collected, unutilized input taxes. It does not have to prove its case because the law already acknowledges it is entitled to refund. Thus it merely has to substantiate the export sales and the excess amount. Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad of activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)***. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998)**.

Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March**

> **30, 1999).** Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).**
>
> Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

On November 5, 2013, respondent likewise filed her Answer in CTA Case No. 8716,[13] interposing the same Special and Affirmative Defenses as those alleged in the Answer for CTA Case No. 8690, except for the amount (*i.e.*, ₱27,484,241.04) and period (*i.e.*, July 1, 2011 to September 30, 2011) of the claim.

Petitioner filed a Motion for Consolidation on November 26, 2013 in CTA Case No. 8716,[14] praying that the latter case be consolidated with CTA Case No. 8690. In the Resolution dated January 7, 2014,[15] this Court granted the Motion and ordered the consolidation of the said cases.

During trial, petitioner presented and formally offered its documentary and testimonial evidence. In the Resolution dated October 14, 2014,[16] this Court admitted petitioner's exhibits, ***except*** for Exhibits "P-8-A-43", "P-241", "P-257", "P-258", "P-259", "P-926", "P-1024", "P-1025", "P-1182", "P-1569", "P-1573", and "P-1577", for not being found in the records, and Exhibit "P-12" for petitioner's failure to submit the original for comparison.

At the hearing held on December 2, 2014, respondent manifested that she will no longer present any evidence. The Court then gave both parties thirty (30) days to file their memoranda.[17]

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[13] Docket – Vol. II (CTA Case No. 8716), pp. 891 to 899.
[14] Docket – Vol. II (CTA Case No. 8716), pp. 908 to 912.
[15] Docket – Vol. II (CTA Case No. 8716), pp. 916 to 917.
[16] Docket – Vol. III (CTA Case No. 8690), pp. 1946 to 1948.
[17] Resolution dated December 2, 2014, Docket – Vol. III (CTA Case No. 8690), p. 1949.

Respondent filed her Memorandum on December 15, 2014;[18] while petitioner filed its Memorandum on December 23, 2014.[19] Thereafter, the consolidated cases were declared submitted for decision via the Resolution dated January 20, 2015.[20]

Hence, this Decision.

THE ISSUES

The sole issue for the consideration of this Court is the following:

> "Whether or not Petitioner Filminera is entitled to recover by way of refund or issuance of tax credit certificate its alleged unutilized creditable input taxes for the fourth quarter of fiscal year ending June 30, 2011 in the amount of PHP78,982,003.52 and for the first quarter of fiscal year ending June 30, 2012 in the amount of PHP27,484,241.04 allegedly representing its domestic purchases.[21]

Petitioner's arguments:

Petitioner argues that it has sufficiently complied with the requirements for the filing of a claim for refund and/or issuance of a TCC of input VAT. According to petitioner, it has adequately proven that it is a VAT-registered taxpayer under Certificate of Registration No. 000-153-888-000 dated January 1, 1997.

Furthermore, petitioner points out that it is engaged in an activity which is subject to zero-rated transaction pursuant to Section 4.106-5, Revenue Regulations (RR) No. 16-2005, since it is a VAT-registered entity exclusively engaged in the supply of Pre-Production Ore and ROM Ore to PGPRC, a BOI-registered producer of gold and silver ore, whose products are 100% exported.

Moreover, petitioner stresses that it submitted and offered as evidence VAT invoices or official receipts, which are compliant with the invoicing requirements under Section 4.108-1 of RR No. 7-95.

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[18] Docket – Vol. III (CTA Case No. 8690), pp. 1950 to 1963.
[19] Docket – Vol. III (CTA Case No. 8690), pp. 1965 to 1983.
[20] Docket – Vol. III (CTA Case No. 8690), p. 1986.
[21] Statement of the Issue, JSFI and Supplemental JSFI, Docket, pp. 1508 and 1524.

Petitioner likewise avers that the input taxes claimed, which consisted of local purchases of goods and services made in the covered period, are not transitional input taxes as the input taxes being claimed are not due to any shift from the sales tax regime to the VAT regime; nor did petitioner shifted from being a non-registered VAT entity to a VAT-registered entity. Anent the input taxes being claimed, petitioner contends that the same were not utilized nor applied against output taxes during and in the succeeding quarters.

In addition, petitioner asserts that the subject claim was due to the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed.

Lastly, petitioner emphasizes that the subject claims were seasonably filed within two (2) years after the close of the taxable quarter when such sales were made.

Respondent's counter-arguments:

Respondent contends that petitioner failed to prove that its sales are zero-rated as contemplated under the law, and that no evidence was presented to show that indeed PGPRC exports 100% of its processed gold and silver ore. Further, respondent stresses that petitioner merely presented the Articles of Incorporation (AOI) of PGPRC to prove that it exports 100% of its processed gold and silver ore. According to respondent, this kind of evidence is not sufficient to prove such allegation, and that the AOI of a juridical person does not prove that said person's sales are 100% exported, as it only shows that such was the declared purpose upon registration with the Securities and Exchange Commission.

Additionally, respondent avers that petitioner's reliance on the BIR Ruling which confirmed that PGPRC exports 100% of its processed gold and silver ore is misplaced; that the said BIR Ruling only exhibits that such would be the BIR's position on the assumption that the given averments in an application for ruling are true; and that respondent issues rulings on the basis of the facts as represented by any taxpayer without any substantial investigation as to the truth thereof, and thus, the *caveat* is that, if upon investigation it will be disclosed that the facts are different, then the ruling shall be considered null and void.

Moreover, respondent points out that petitioner failed to show or prove the following: (1) that its purchases of non-capital goods and services were made in the course of its trade and business; (2) that the said purchases were properly supported by VAT invoices and/or official receipts and other documents; and (3) that the input taxes of ₱78,982,003.52 and ₱27,484,241.04 allegedly paid on its purchases of goods and services, were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters.

Respondent further states that there was no proof of compliance with the prescribed checklist of requirements to be submitted involving a claim for VAT refund, pursuant to Revenue Memorandum Order (RMO) No. 53-98, hence, there was no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial in accordance with the NIRC of 1997. Respondent emphasizes that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

Furthermore, respondent believes that petitioner merely alleged in the petition for review that it completely submitted all the necessary documents in support of its claim for refund; and that petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund *pro forma*.

Finally, respondent stresses that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund; and that tax refunds, like tax exemptions, are construed strictly against the taxpayer.

THE COURT'S RULING

Petitioner failed to sufficiently substantiate it's refund claims in the instant consolidated Petitions for Review

Requisites for the grant of the refund or issuance of a TCC under the law.

Section 112 of the NIRC of 1997, as amended by RA No.

9337,[22] provides:

> "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 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 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 a 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

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[22] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In line with the foregoing provisions, certain requisites have been jurisprudentially formulated which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are categorized as follows, to wit:

As to the timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[23]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[24]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is VAT registered;[25]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[26]
5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[27]

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[23] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.vs Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[24] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[25] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[26] *Id.*

[27] *Id.*

As regards the taxpayer's input VAT being refunded:

6. the input taxes are due or paid;[28]
7. the input taxes are not transitional input taxes;[29]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;[30]
9. where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[31] and
10. the input taxes have not been applied against output taxes during and in the succeeding quarters.[32]

The Court shall now make a determination of petitioner's compliance with the foregoing requisites.

First and second requisites:

The **first** and **second** requisites pertain to the timeliness of petitioner's filing of its administrative and judicial claims for issuance of tax credit certificates or tax refund for its input VAT. Petitioner's subject claims cover the fourth quarter of FY 2011 and first quarter of FY 2012, which respectively closed on June 30, 2011 and September 30, 2011.

Counting two years from said dates, petitioner had respectively until June 30, 2013 and September 30, 2013 within which to file its administrative claims for issuance of TCC or refund before the Commissioner of Internal Revenue.

As shown below, petitioner's administrative claims filed on March 15, 2013[33] and May 8, 2013[34] were timely filed, thus complying with the first requisite, to wit:

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[32] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[33] Exhibit "P-9", Docket – Vol. II (CTA Case No. 8690), p. 1210.
[34] Exhibit "P-10", Docket – Vol. II (CTA Case No. 8690), p. 1213.

CTA Case No.	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Filing Date of Administrative Claim
8690	4th Quarter of 2011	June 30, 2011	June 30, 2013	March 15, 2013
8716	1st Quarter of 2012	September 30, 2011	September 30, 2013	May 8, 2013

Anent the **second** requisite, the same is taken from the above-quoted Section 112(C) of the NIRC of 1997, as amended by RA No. 9337, which enunciates the 120+30 mandatory and jurisdictional periods. Applying this provision, petitioner's judicial claims for the 4th quarter of FY 2011 and 1st quarter of FY 2012 were likewise timely filed within the said periods, as shown below:

CTA Case No.	Period	Date of Filing of Administrative Claim	End of 120 days for CIR to decide on refund claim	End of 30 days from expiration of 120 days	Date of Filing of Petition for Review
8690	4th Quarter of 2011	March 15, 2013	July 13, 2013	Aug. 12, 2013	Aug. 8, 2013
8716	1st Quarter of 2012	May 8, 2013	Sept. 5, 2013	Oct. 5, 2013	Oct. 4, 2013

We do not subscribe to respondent's contention that there must be proof of compliance by petitioner with the checklist of requirements prescribed under RMO No. 53-98 in order to commence the running of the 120-day period under Section 112. A cursory reading of RMO No. 53-98 shows that there is nothing in the said issuance which mandates the submission of the list of documents therein stated, upon the filing of an application for refund or issuance of TCC for input VAT under Section 112.

In *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*,[35] the Supreme Court said:

> "The CIR, however, insists that TSC failed to submit the complete documents enumerated in RMO 53-98. Thus, the 120-day period given for it to decide allegedly did not commence.
>
> <u>The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or</u>

[35] G.R. No. 205055, July 18, 2014.

> RMO 53-98 itself that requires submission of complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'" *(Underscoring supplied)*

Furthermore, bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.[36] It is noteworthy that respondent did not present any evidence to refute petitioner's evidence.[37] Considering that respondent ought to know the tax records of all taxpayers, she could have easily disproved the claimants' allegations.[38]

Third requisite:

The **third** requisite requires that the taxpayer is VAT registered.

Petitioner has shown compliance with the ***third*** requisite by presenting its Certificate of Registration issued by BIR with TIN 000-153-880-000, indicating that it is liable to VAT.[39]

Fourth and fifth requisites:

The **fourth** requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales. The pertinent provision is Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended by RA No. 9337, which reads as follows:

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

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[36] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, January 15, 2014.
[37] Resolution dated December 2, 2011, Docket – Vol. III (CTA Case No. 8690), p. 1949.
[38] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.
[39] Exhibit "P-4", Docket – Vol. II (CTA Case No. 8690), p. 1150.

(A) *Rate and Base of Tax.* – xxx
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:
xxx xxx xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; and
xxx xxx xxx"

Relative thereto, Section 4.106-5(a)(5) of RR No. 16-2005[40], states:

"SECTION 4.106-5. *Zero-rated Sales of Goods or Properties.* – xxx

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

(a) *Export sales.* – *'Export Sales'* shall mean:
xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
xxx xxx xxx

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided,* finally, **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect**

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[40] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

> **must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently reissued by the BOI.**" *(Emphasis supplied)*

In this case, consistent and in compliance with the above-quoted provisions of Section 4.106-5(a)(5) of RR No. 16-2005, petitioner's buyer, PGPRC, was issued the Certification dated July 21, 2011[41] by the BOI, attesting to the fact that PGPRC is a BOI-registered entity that exported 100% of its processed gold and silver ore covering July 1, 2010 to June 30, 2011. In the same Certification, it is stated that that the same is valid from July 1, 2011 to June 30, 2012, unless sooner revoked by the BOI Governing Board for any or all of the following grounds: (a) Failure of PGPRC to comply with any of its BOI registration terms, commitments, and conditions; (b) Failure to export 100% in any of the instances set forth in Section 2 of Revenue Memorandum Order (RMO) No. 9-2000; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations for the fiscal year 2011. Thus, it is shown that petitioner's sales of processed gold and silver ore to PGPRC qualifies for VAT zero-rating.

Furthermore, in its Quarterly VAT Returns for the 4th quarter of FY 2011 and the 1st quarter of FY 2012, petitioner declared zero-rated sales in the amounts of ₱868,443,843.68 and ₱394,303,072.15, respectively, totaling ₱1,262,746,915.83, to wit:

Exhibit	Period Covered	Zero-Rated Sales
"P-13"	April 01, 2011 to June 30, 2011	₱ 868,443,843.68
"P-14"	July 01, 2011 to September 30, 2011	394,303,072.15
Total		**₱ 1,262,746,915.83**

In support of the said zero-rates sales, petitioner submitted its official receipts[42] and invoices[43], as well as its Summary of Sales Transactions[44]for the months of April 2011 to September 2011. However, scrutiny of petitioner's supporting invoices and summaries of sales transactions disclosed that the above amount of ₱1,262,746,915.83 comprised of petitioner's ore sales to PGPRC in the amount of ₱1,261,876,915.83 and revenues from lease of land to the same entity in the amount of ₱870,000.00, detailed as follows: M

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[41] Exhibit "P-8-A".
[42] Exhibits "P-15" to "P-26".
[43] Exhibits "P-27" to "P-38".
[44] Exhibits "P-39" to "P-44".

Invoice No.		Exhibit	Ore Sales to PGPRC Per Invoice (In US$)	per Summary of Sales Transaction (In PhP)	Exhibit	Land Lease to PGPRC (In PhP)	Total (In PhP)
00091	4/30/2011	"P-27"				145,000.00	145,000.00
00092	4/30/2011	"P-28"	6,387,770.48	274,022,578.05	"P-39"		274,022,578.05
00093	5/31/2011	"P-29"				145,000.00	145,000.00
00094	5/31/2011	"P-30"	6,360,140.52	274,859,832.71	"P-40"		274,859,832.71
00095	6/30/2011	"P-31"				145,000.00	145,000.00
00096	6/30/2011	"P-32"	7,357,272.12	319,126,432.92	"P-41"		319,126,432.92
		Subtotal	**20,105,183.12**	**868,008,843.68**		**435,000.00**	**868,443,843.68**
00097	7/31/2011	"P-33"				145,000.00	145,000.00
00098	7/31/2011	"P-34"	3,779,481.13	159,535,677.98	"P-42"		159,535,677.98
00099	8/31/2011	"P-35"				145,000.00	145,000.00
00100	8/31/2011	"P-36"	2,574,780.36	109,567,203.44	"P-43"		109,567,203.44
00101	9/30/2011	"P-37"				145,000.00	145,000.00
00102	9/30/2011	"P-38"	2,860,668.38	124,765,190.73	"P-44"		124,765,190.73
		Subtotal	**9,214,929.87**	**393,868,072.15**		**435,000.00**	**394,303,072.15**
TOTAL			**29,320,112.99**	**1,261,876,915.83**		**870,000.00**	**1,262,746,915.83**

The amount of ₱870,000.00 revenues derived by petitioner from its lease of land to PGPRC cannot be considered as zero-rated export sales of goods under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of RR No. 16-2005.

Consequently, out of the total reported zero-rated sales in the Quarterly VAT Returns for the 4th quarter of FY 2011 and the 1st quarter of FY 2012 in the total amount of ₱1,262,746,915.83, only the amount of ₱1,261,876,915.83 qualifies for VAT zero-rating pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, in relation to Section 4.106-5(a)(5) of RR No. 16-2005.

As reqards the **fifth** requisite, the same pertains only to zero-rated sales under Section 106 (A)(2) (1) and (2); 106 (B) (1) and (2). Considering that petitioner's VAT zero-rating is based on Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the ***fifth*** requisite is not applicable to petitioner, and thus, it need not comply with the same.

Sixth, seventh, eighth, ninth and tenth requisites.

After having resolved that petitioner had VAT zero-rated sales for the 4th quarter of FY 2011 and the 1st quarter of FY 2012 in the total amount of ₱1,261,876,915.83, the Court shall proceed to determine whether petitioner complied with the following remaining requisites, to wit:

a) *sixth requisite*: the input taxes are due or paid;
b) *seventh requisite*: the input taxes are not transitional input taxes;
c) *eighth requisite*: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
d) *ninth requisite*: where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
e) *tenth requisite*: the input taxes have not been applied against output taxes during and in the succeeding quarters.

As reflected in its Quarterly VAT Returns for the 4th quarter of FY 2011 and the 1st quarter of FY 2012, petitioner incurred input VAT in the total amount of ₱106,466,244.56, broken down as follows:

	4th Quarter of FY ending June 30, 2011 *(Exhibit "P-13")*	**1st Quarter of FY ending June 30, 2012** *(Exhibit "P-14")*	**Total**
Domestic Purchases of Goods other than Capital Goods	₱ 896,619.19	₱ 731,974.34	₱ 1,628,593,.53
Domestic Purchase of Services	78,085,384.33	26,752,266.70	104,837,651.03
Total	**₱ 78,982,003.52**	**₱ 27,484,241.04**	**₱ 106,466,244.56**

The above input VAT claimed are **<u>not</u>** transitional input taxes, which is considered to be the two percent (2%) of the value of the beginning inventory on hand or actual VAT on such goods, materials and supplies, whichever is higher, which amount shall be creditable against the output tax of VAT-registered person.[45]

In support of its claim, petitioner submitted various invoices and official receipts issued to it by its suppliers which were examined by the Court-commissioned Independent CPA (ICPA), Clifford E. Chua. We adopt the findings of the ICPA, as stated in his Report dated June 4, 2014[46], that from the total input VAT claim of ₱106,466,244.56, petitioner accounted only an input VAT of ₱101,361,470.80. Hence,

[45] Section 4.111-1(a), Revenue Regulations No. 16-2005.
[46] Exhibit "P-1693".

We disallow the difference between the subject input VAT claim per return and the amount accounted by the ICPA on the basis of supporting invoices and official receipts submitted by petitioner, in the total amount of ₱5,104,773.76, for being unsupported by documents, to wit:

	4thQuarter of FY ending June 30, 2011	1stQuarter of FY ending June 30, 2012	Total
Input VAT claim per return	₱78,982,003.52	₱27,484,241.04	₱ 106,466,244.56
Input VAT accounted by the ICPA	74,090,735.06	27,270,735.74	101,361,470.80
Difference	**₱ 4,891,268.46**	**₱ 213,505.30**	**₱ 5,104,773.76**

We adopt the breakdown of the amount of input VAT accounted by the ICPA, to wit:

Findings	Amount	Exhibit
Fourth Quarter of FY 2011		
A. Purchases with appropriate supporting documents (No exceptions noted)	₱ 64,462,176.23	"P-58" to "P-138"
B. Exceptions noted:		
1. Summary of Input VAT from local purchases without proper supporting documents.	3,182,109.39	"P-139" to "P-259"
2. Summary of Input VAT from local purchases with noted alterations in the supporting documents.	4,285,027.56	"P-260" to "P-305"
3. Summary of Input VAT outside the period of claim.	8,357.14	"P-306"
4. Summary of Input VAT where the supporting documents are mere photocopies.	1,071,838.98	"P-307" to "P-315"
5. Summary of Input VAT where the amount in words is not indicated.	1,046,476.45	"P-316" to "P-891"
6. Summary of Input VAT where the address of the Company is not indicated.	34,749.31	"P-892" to "P-896"
Total Input VAT accounted for the 4th Quarter of FY 2011	**₱ 74,090,735.06**	
First Quarter of FY 2012		
A. Purchases with appropriate supporting documents (No exceptions noted)	17,013,994.13	"P-897" to "P-995"
B. Exceptions noted:		
1. Summary of Input VAT from local purchases without proper supporting documents.	2,945,854.94	"P-996" to "P-1033"
2. Summary of Input VAT from local purchases where Input VAT in the supporting documents are not separately shown.	4,206.43	"P-1034"
3. Summary of Input VAT from local purchases with noted alterations in the supporting documents.	447,618.58	"P-1035" to "P-1056"
4. Summary of Input VAT outside the period of claim.	5,106.00	"P-1057"
5. Summary of Input VAT where the supporting documents are mere photocopies.	4,305,103.36	"P-1058" to "P-1070"
6. Summary of Input VAT where the amount in words is not indicated.	819,693.71	"P-1071" to "P-1677"

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7. Summary of Input VAT where the address of the Company is not indicated.	1,729,158.59	"P-1678" to "P-1691"
Total Input VAT accounted for the 1st Quarter of FY 2012	**₱ 27,270,735.74**	
Total Input VAT accounted for the 4th Quarter of FY 2011 and 1st Quarter of FY 2012	**₱101,361,470.80**	

The Court further rules to disallow input VAT in the total amount of ₱16,246,865.24, for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended, broken down as follows:

Findings	Amount	Exhibit
4th Quarter of FY 2011		
1. Summary of Input VAT from local purchases without proper supporting documents.	₱ 3,182,109.39	"P-139" to "P-259"[47]
2. Summary of Input VAT from local purchases with noted alterations in the supporting documents.	4,285,027.56	"P-260" to "P-305"
3. Summary of Input VAT where the supporting documents are mere photocopies.	1,071,838.98	"P-307" to "P-315"
sub-total	***8,538,975.93***	
1st Quarter of FY 2012		
1. Summary of Input VAT from local purchases without proper supporting documents.	2,945,854.94	"P-996" to "P-1033"
2. Summary of Input VAT from local purchases where Input VAT in the supporting documents are not separately shown.	4,206.43	"P-1034"
3. Summary of Input VAT from local purchases with noted alterations in the supporting documents.	447,618.58	"P-1035" to "P-1056"
4. Summary of Input VAT outside the period of claim.	5,106.00	"P-1057"
5. Summary of Input VAT where the supporting documents are mere photocopies.	4,305,103.36	"P-1058" to "P-1070"
sub-total	***7,707,889.31***	
Total Disallowed Input VAT	**₱ 16,246,865.24**	

In addition, the input VAT of ₱13,705.76 shall also be disallowed as the same was supported by documents which were denied admission by this Court for not being found in the records as per Resolution dated October 14, 2014,[48] to wit:

[47] Exhibits "P-241" and "P-257" to "P-259" should indeed be excluded, since the same were not admitted by this Court in the Resolution dated October 14, 2014, for not being found on the records.

[48] Docket – Vol. III (CTA Case No. 8690), pp. 1946 to 1948.

Exhibit	OR/Invoice No.	Supplier	1st Quarter of FY ending June 30, 2012
"P-926"	4428	Astron Communication Systems	₱ 13,666.29
"P-1182"	SEKOR000076005	Smart Communications, Inc.	22.04
"P-1569"	SBEOR001244768	Smart Communications, Inc.	2.67
"P-1573"	SBEOR001244766	Smart Communications, Inc.	10.47
"P-1577"	SBEOR001244757	Smart Communications, Inc.	4.29
Total			**₱ 13,705.76**

As a result, out of petitioner's input VAT claim for the 4th quarter of FY 2011 and the 1st quarter of FY 2012 in the total amount of ₱106,466,244.56, only the amount of ₱85,100,899.80 represents petitioner's valid input VAT, as computed below:

	4th Quarter of FY ending June 30, 2011	1st Quarter of FY ending June 30, 2012	Total
Input VAT Claimed	₱ 78,982,003.52	₱ 27,484,241.04	₱ 106,466,244.56
Less: Disallowances			
a) Per ICPA Report	8,538,975.93	7,707,889.31	16,246,865.24
b) Per this Court's findings			
1. Without supporting documents	4,891,268.46	213,505.30	5,104,773.76
2. The supporting documents were denied admission by this Court		13,705.76	13,705.76
Total Disallowances	13,430,244.39	7,935,100.37	21,365,344.76
Valid Input VAT	**₱ 65,551,759.13**	**₱ 19,549,140.67**	**₱ 85,100,899.80**

However, as previously stated, petitioner has receipts from lease of land for the 4th quarter of FY 2011 and the 1st quarter of FY 2012 in the amount of ₱870,000.00.

Under the **eight** requisite, the input taxes claimed must be attributable to zero-rated or effectively zero-rated sales; while under the **ninth** requisite, it is required that where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume. Hence, consistent with the ***eighth*** and ***ninth*** requisites, in claiming refund or tax credit of input VAT, only the input VAT in the amount of ₱85,046,498.33 can be attributed to petitioner's zero-rated sales for the 4th quarter of FY 2011 and the 1st quarter of FY 2012, computed as follows:

	4th Quarter of FY ending June 30, 2011	1st Quarter of FY ending June 30, 2012	Total
Valid Input VAT	**₱ 65,551,759.13**	**₱ 19,549,140.67**	**₱ 85,100,899.80**
Allocated to			
Zero-rated Sales/Receipts	₱868,008,843.68	₱393,868,072.15	₱1,261,876,915.83
Lease of Land	435,000.00	435,000.00	870,000.00
Total	₱868,443,843.68	₱394,303,072.15	₱1,262,746,915.83
Allocation Factor			
Zero-rated Sales/Receipts	99.949910405%[49]	99.889678769%[50]	
Lease of Land	0.05008959%[51]	0.110321230%[52]	
Input VAT Attributable to Zero-rated Sales	**₱ 65,518,924.52**[53]	**₱ 19,527,573.81**[54]	**₱ 85,046,498.33**

However, as for the ***tenth*** requisite, *i.e.*, the input taxes have not been applied against output taxes during and in the succeeding quarters, We find that petitioner failed to establish such fact.

Upon verification of petitioner's Quarterly VAT Return for the 1st quarter of FY 2012[55], it is shown that petitioner deducted the amounts of ₱360,739,406.51, representing the "VAT Refund / TCC claimed", and of ₱469,862.26, representing the "Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period", from the "Total Available Input Tax" in the amount of ₱417,509,030.79, resulting in the amount of ₱56,299,762.02, as "Total Allowable Input Tax".

While it can be easily discerned from the said Quarterly VAT Return and the Quarterly VAT Return for the 4th quarter of FY 2011[56] that the amounts being claimed, *i.e.*, ₱78,982,003.52, for the period April 1, 2011 to June 30, 2011, and ₱27,484,241.04, for July 1, 2011 to September 30, 2011, are included in the said amount of ₱417,509,030.79, it cannot be determined whether or not the said

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[49] ₱868,008,843.68 divided by ₱868,443,843.68.
[50] ₱393,868,072.15 divided by ₱394,303,072.15.
[51] ₱435,000.00 divided by ₱868,443,843.68.
[52] ₱435,000.00 divided by ₱394,303,072.15.
[53] ₱65,551,759.13 multiplied by 99.949910405%.
[54] ₱19,549,140.67 multiplied by 99.889678769%.
[55] Exhibit "P-14", Docket – Vol. III (CTA Case No. 8690), pp. 1882 to 1886.
[56] Exhibit "P-13", Docket – Vol. III (CTA Case No. 8690), pp. 1876 to 1881.

amounts of the claim form part of the "Total Allowable Input Tax" in the amount of ₱56,299,762.02. Thus, We cannot definitely say that the input VAT being claimed in these consolidated cases, or part thereof, were not applied against output taxes during and in the succeeding quarters.

As cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[57]

Furthermore, statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to VAT are in the nature of such exemptions.[58] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund,[59] which it has failed to discharge in this case.

WHEREFORE, all the foregoing considered, the consolidated Petitions for Review are hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[57] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[58] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

[59] *Citibank, N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997.

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice