REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION, *Petitioner,*	**CTA CASE No. 9457** **For: Refund**
-versus-	**Members:** **CASTAÑEDA, JR., Chairperson, MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 23 2019 9:00 a.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on October 15, 2018 is a Petition for Review,[1] filed by petitioner Carmen Copper Corporation on August 26, 2016, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125,[3] as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8

---

[1] *Docket*, Vol. I, pp. 10-22.
[2] Sec. 7. Jurisdiction. - The CTA shall exercise:

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

(1) Decisions of 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;

xxx

[3] Act Creating the Court of Tax Appeals.
[4] Sec. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:

of the Revised Rules of the Court of Tax Appeals, as amended.

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission (SEC) Registration No. CS200414509. Petitioner's office address is located at unit 502-P and 503-P, Five E-Com Center, Palm Coast Ave., corner Pacific Drive, Mall of Asia Complex, Pasay City, Philippines. It is engaged in the business of mining ores and other mineral resources.[6]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Certificate of Registration No. OCN8RC0000048993 dated October 5, 2004.[7] It is also registered with the Board of Investments (BOI) as a "New Producer of Copper Concentrate" with non-pioneer status under Certificate of Registration No. 2006-158.[8]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, 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) or other laws or portions thereof administered

---

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

> (1) Decisions of 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.

[5] Sec. 4. Where to appeal; mode of appeal.-

(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 & 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.

[6] Exhibit "P-2", *Docket,* Vol. I, pp. 287-305.
[7] Exhibit "P-1"," *Ibid.,* p. 286.
[8] Exhibit "P-3", *Ibid.,* pp. 306-312.

by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner duly filed its Quarterly VAT Return for the first quarter of TY 2014.[9]

On March 30, 2016, petitioner filed with the BIR Large Taxpayers Services - Excise Tax Division administrative claims for refund of its alleged excess and unutilized input VAT payments for the first quarter of TY 2014 in the amount of ₱47,171,347.70.[10]

On July 28, 2016, petitioner received a letter partially denying petitioner's claim for refund of its accumulated and unutilized input VAT for the first quarter of TY 2014.[11] In the said letter, respondent informed petitioner that only the amount of ₱22,557,138.15 was recommended for the issuance of tax credit certificate.

In view of the lapse of the 120-day period and the partial denial of its administrative claims for refund, petitioner filed a Petition for Review with this Court for the refund or issuance of TCC for its alleged excess and unutilized input VAT denied by the CIR for the first quarter of TY 2014 in the amount of ₱24,614,209.55.

On October 5, 2016, respondent filed his answer.[12]

The case was set for pre-trial conference on February 2, 2017.[13]

Respondent filed its Pre-Trial Brief[14] on October 20, 2016; while petitioner filed his Pre-Trial Brief[15] on January 30, 2017.

---

[9] Exhibit "P-6", *Ibid.,* p. 320.
[10] Exhibit "P-7", *Ibid.,* p. 321-322.
[11] Exhibit "P-19", *Ibid.,* p. 337.
[12] *Supra,* note 1, pp. 80-85.
[13] Notice of Pre-Trial Conference, *Ibid.*, pp. 87-88.
[14] *Ibid.*, pp. 91-99.
[15] *Ibid.*, pp. 102-122.

L

The parties filed their Joint Stipulation of Facts and Issues[16] on March 6, 2017. This was approved and adopted by the Court in the Pre-Trial Order[17] issued on March 28, 2017, which also terminated the pre-trial.

Upon motion of petitioner,[18] the Court commissioned Mr. Emmanuel Y. Mendoza as the Independent Certified Public Accountant (ICPA) for the case.[19]

During trial, petitioner presented the following witnesses: Mr. Fernando A. Rimando,[20] its Chief Financial Officer; and Emmanuel Y. Mendoza,[21] the Court-commissioned ICPA.

Petitioner's documentary exhibits are as follows:

EXHIBIT No.	**DESCRIPTION**
"P-1"	Petitioner's Bureau of Internal Revenue ("BIR") Certificate of Registration No. 8RC0000791446E dated 20 December 2016
"P-2"	Petitioner's Amended Articles of Incorporation issued by the Securities and Exchange Commission ("SEC") on 7 November 2016, with SEC Registration No. CS200414509, duly approved by the SEC
"P-3"	Petitioner's Board of Investments ("BOI") Registration No. 2006-158 dated 13 December 2006, with attached Terms and Conditions
"P-4"	BOI Certification dated 30 January 2015
"P-5"	Certificate of Inward Remittance dated 9 January 2015 issued by BDO Unibank Inc.-Trust and Investments Group
"P-6"	Petitioner's Original Quarterly value-added tax ("VAT") Return for the first quarter of TY 2014, which was filed with the BIR through the Electronic Filing and Payments System ("EFPS") on 25 April 2014 with E-Filing Reference No. 101400008894839
"P-7"	Petitioner's Application for Tax Credits/Refunds (BIR Form No. 1914) for the first quarter of TY 2014 with

[16] *Ibid.*, pp. 430-446.
[17] *Ibid.*, pp. 473-483.
[18] *Ibid.*, pp. 447-452.
[19] May 11, 2017 Order, *Ibid.*, pp. 501-502.
[20] Judicial Affidavit, *Ibid.*, pp. 275-285.
[21] Judicial Affidavit, *Dockets,* Vol. II , pp. 623-634.

C

	attached supporting documents, which was filed with the BIR on 30 March 2016
"P-8"	Petitioner's Original Quarterly VAT Return for the second quarter of TY 2014, which was filed with the BIR through the EFPS on 25 July 2014 with E-Filing Reference No. 101400009359536
"P-8-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the second quarter of TY 2014 showing that no amount was indicated as input tax carried over from the previous quarter
"P-9"	Petitioner's Original Quarterly VAT Return for the third quarter of TY 2014, which was filed with the BIR through the EFPS on 25 October 2014 with E-Filing Reference No. 101400009847185
"P-9-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the third quarter of TY 2014 showing that no amount was indicated as input tax carried over from the previous quarter
"P-10"	Petitioner's Original Quarterly VAT Return for the fourth quarter of TY 2014 which was filed with the BIR through the EFPS on 24 January 2015 with E-Filing Reference No. 101500010410343
"P-10-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the fourth quarter of TY 2014 showing that no amount was indicated as input tax carried over from the previous quarter
"P-11"	Petitioner's Original Quarterly VAT Return for the first quarter of TY 2015, which was filed with the BIR through the EFPS on 25 April 2015 with E-Filing Reference No. 101500011212920
"P-11-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the first quarter of TY 2015 showing that no amount was indicated as input tax carried over from the previous quarter
"P-12"	Petitioner's Original Quarterly VAT return for the second quarter of TY 2015, which was filed with the BIR through the EFPS on 25 July 2015 with E-Filing Reference No. 101500012053552
"P-12-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the second quarter of TY 2015 showing that no amount was indicated as input tax carried over from the previous quarter
"P-13"	Petitioner's Original Quarterly VAT Return for the third quarter of TY 2015, which was filed with the BIR through the EFPS on 23 October 2015 with E-Filing Reference No. 101500012950163
"P-13-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the third quarter of TY 2015 showing that

L

	no amount was indicated as input tax carried over from the previous quarter
"P-14"	Petitioner's Original Quarterly VAT Return for the fourth quarter of TY 2015, which was filed with the BIR through the EFPS on 26 January 2016 with E-Filing Reference No. 101600014009152
"P-14-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the fourth quarter of TY 2015 showing that no amount was indicated as input tax carried over from the previous quarter
"P-15"	Petitioner's Original Quarterly VAT Return for the first quarter of TY 2016, which was filed with the BIR through the EFPS on 25 April 2016 with E-Filing Reference No. 101600015209442
"P-15-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the first quarter of TY 2016 showing that no amount was indicated as input tax carried over from the previous quarter
"P-16"	Petitioner's Original Quarterly VAT Return for the second quarter of TY 2016, which was filed with the BIR through the EFPS on 25 July 2016 with E-Filing Reference No. 101600016221588
"P-16-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the second quarter of TY 2016 showing that no amount was indicated as input tax carried over from the previous quarter
"P-17"	Petitioner's Original Quarterly VAT Return for the third quarter of TY 2016, which was filed with the BIR through the EFPS on 25 October 2016 with E-Filing Reference No. 101600017262803
"P-17-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the third quarter of TY 2016 showing that no amount was indicated as input tax carried over from the previous quarter
"P-18"	Petitioner's Original Quarterly VAT Return for the fourth quarter of TY 2016, which was filed with the BIR through the EFPS on 24 January 2017 with E-Filing Reference No. 101700018417779
"P-18-a"	Line 20A of Petitioner's Original Quarterly VAT Return for the fourth quarter of TY 2016 showing that no amount was indicated as input tax carried over from the previous quarter
"P-19"	Notice of Disallowance addressed to Petitioner issued by Assistant Commissioner of Large Taxpayers Service Nestor S. Valeroso, received by Petitioner on 28 July 2016
"P-19-a"	Middle portion of the computation titled "Subtotal" in the amount of Php24,614,209.55 located in the

L

	body of the Notice
"P-19-b"	Bottom portion of the computation titled "Amount Recommended for TCC" in the amount of Php413,526.95 from the BIR and Php22,143,611.20 from the BOC, in the body of the Notice
"P-20"	Petitioner's Audited Financial Statements for 2014
"P-21"	Application to the BOI dated 14 January 2015 for the issuance of a certification which states that the export documents of the Petitioner shows that one hundred percent (100%) of the products produced by the Petitioner is exported in compliance with BIR Revenue Memorandum Order No. 9-2000, with attached supporting documents
"P-22"	Judicial Affidavit of Mr. Emmanuel Mendoza for his Commissioning as an Independent Certified Public Accountant ("ICPA") dated 6 March 2017
"P-22-a"	The signature of Mr. Emmanuel Mendoza on page 4 of his Judicial Affidavit dated 6 March 2017
"P-23"	Certificate of Accreditation dated 18 December 2015 valid until 18 December 2018 of Mr. Emmanuel Y. Mendoza issued by the BIR
"P-24"	Certificate of Accreditation dated 14 July 2015 valid until 31 December 2017 of Mr. Emmanuel Y. Mendoza's firm - Mendoza Querido & Co. - issued by the Board of Accountancy
"P-25"	Certificate of Accreditation dated 6 March 2017 valid until 1 March 2020 of Mr. Emmanuel Y. Mendoza issued by the SEC
"P-26"	The Judicial Affidavit dated 26 January 2017 of Mr. Fernando A. Rimando
"P-26-a"	The signature of Mr. Fernando A. Rimando on page 10 of the Judicial Affidavit dated 26 January 2017
"P-27"	The Judicial Affidavit dated 19 July 2017 of Mr. Emmanuel Y. Mendoza
"P-27-a"	The signature of Mr. Emmanuel Y. Mendoza on page 11 of the Judicial Affidavit dated 19 July 2017
P-28"	The ICPA Report submitted to this Honorable Court on 13 June 2017 consisting of twenty-three (23) pages, and its exhibits
"P-28-a"	The signature of Mr. Emmanuel Y. Mendoza found in page 23 of the ICPA Report submitted to this Honorable Court on 13 June 2017
"P-29"	The Compact Disk containing the duly-marked supporting documents used in the ICPA Report submitted to this Honorable Court on 13 June 2017
"P-35"	Petitioner's schedule of revenues for the first quarter of TY 2014
"P-35-1"	Supporting VAT invoices, bill of lading and export

ℒ

to "P-35-30"	declaration for zero-rated sales
"P-35-31" to "P-35-53"	Supporting VAT invoices for sales subject to 12% VAT
"P-36-1-1" to "P-36-1-65" (*except P-36-1-63*)	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-2-1" to "P-36-2-412"	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-3-1" to "P-36-3-76" (*except P-36-3-21 to 41*)	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-4-1" to "P-36-4-4"	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods.
"P-36-5-1" to "P-36-5-32"	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-6-1" to "P-36-6-309"	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-7-1" to "P-36-7-110"	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-8-1"	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-9-1" to "P-36-9-4"	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-10-1" to "P-36-10-14"	Supporting VAT ORs, VAT invoices and tape receipts for input VAT on domestic purchase of services and goods
"P-36-1-63"	Supporting documents other than VAT ORs and VAT invoices on domestic purchase of services and goods
"P-36-3-21" to "P-36-3-41"	Supporting documents other than VAT ORs and VAT invoices on domestic purchase of services and goods
"P-36-8-2" to "P-	Supporting documents other than VAT ORs and VAT invoices on domestic purchase of services and

36-8-7"	goods
"P-36-11-1" to "P-36-11-3"	Supporting documents other than VAT ORs and VAT invoices on domestic purchase of services and goods
"P-36-12-1" to "P-36-12-1068" *(except for P-36-12-440)*	Supporting SSDT, Bank OR, BOC OR, BOC IE&IRD, invoices and VAT invoices on importation and domestic purchases of capital goods
"P-36-13-1" to "P-36-13-28"	Supporting SSDT, Bank OR, BOC OR, BOC IE&IRD, invoices and VAT invoices on importation and domestic purchases of capital goods
"P-36-14-1" to "P-36-14-12"	Supporting SSDT, Bank OR, BOC OR, BOC IE&IRD, invoices and VAT invoices on importation and domestic purchases of capital goods
"P-36-15-1" & "P-36-15-2"	Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600) for the month of February and March of TY 2014 with corresponding payment confirmation from the BIR
"P-37-1" to "P-37-4"	Amended quarterly VAT returns for the first, second, third, and fourth quarters of TY 2014
"P-37-5" to "P-37-8"	Quarterly VAT returns for the first, second, third, and fourth quarters of TY 2015
"P-37-9" to "P-37-12"	Quarterly VAT returns for the first, second, third, and fourth quarters of TY 2016
"P-37-13"	First quarter VAT return of TY 2017
"P-38"	Certificate of Inward Remittance dated 11 January 2016 issued by BDO Unibank Inc.-Trust and Investments Group *(actually dated January 9, 2015)*
"P-39"	Petitioner's Bureau of Internal Revenue Certificate of Registration No. 8RC0000048993 dated 5 October 2004
"P-40"	Petitioner's BOI Registration No. 2006-158 dated 13 December 2006, with attached Terms and Conditions; and the BOI Certification dated 30 January 2015

L

Petitioner filed its Formal Offer of Evidence[22] on August 24, 2017, consisting of Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-8-a", "P-9", "P-9-a", "P-10", "P-10-a", "P-11", "P-11-a", "P-12", "P-12-a", "P-13", "P-13-a", "P-14", "P-14-a", "P-15", "P-15-a", "P-16", "P-16-a", "P-17", "P-17-a", "P-18", "P-18-a", "P-19", "P-19-a", "P-19-b", "P-20", "P-21", "P-22", "P-22-a", "P-23", "P-24", "P-25", "P-26", "P-26-a", "P-27" "P-27-a", "P-28", "P-28-a", "P-29", "P-35", "P-35-1" to "P-35-30", "P-35-31" to "P-35-53", "P-36-1-1" to "P-36-1-65", "P-36-2-1" to "P-36-2-412", "P-36-3-1" to "P-36-3-76" "P-36-4-1" to "P-36-4-4", "P-36-5-1" to "P-36-5-32", "P-36-6-1" to "P-36-6-309", "P-36-7-1" to "P-36-7-110", "P-36-8-1" to "P-36-8-7", "P-36-9-1" to "P-36-9-4", "P-36-10-1" to "P-36-10-14", "P-36-11-1" to "P-36-11-3", "P-36-12-1" to "P-36-12-1068", "P-36-13-1" to "P-36-13-28", "P-36-14-1" to "P-36-14-12", "P-36-15-1" to "P-36-15-2", "P-37-1" to "P-37-13", "P-38", "P-39" and "P-40". The Court admitted petitioner's formally offered exhibits, except for Exhibits "P-1" and "P-36-12-440" on ground of not being found in the records of the case.[23]

The respondent's documentary exhibits are as follows:

EXHIBIT No.	DESCRIPTION
"R-1"	Memorandum of Assignment No. RC-03-16-007 date 30 March 2016
"R-2"	Memorandum Report dated 15 July 2016
"R-3"	Denial Letter addressed to petitioner
"R-4"	VAT Credit Evaluation Report
"R-5"	Entire BIR Records of CTA Case No. 9457

Respondent presented Revenue Officer Dalisay Umlas[24] as his lone witness. Thereafter, respondent filed his Formal Offer of Evidence[25] on May 4, 2018, consisting of Exhibits "R-1", "R-2", "R-3", "R-4" and "R-5". Respondent's formally offered evidence were all admitted by the Court through a Resolution[26] dated July 27, 2018.

---

[22] *Ibid.*, pp. 643-667.
[23] January 26, 2018 Resolution, *Ibid.*, pp. 1187-1189.
[24] Exhibit "R-26", *Ibid.*, pp. 5-8.
[25] *Ibid.*, pp. 1200-1204.
[26] *Ibid.*, pp. 1214-1215.

L

Respondent filed his Memorandum[27] on August 30, 2018; while petitioner filed its Memorandum[28] on October 1, 2018, which was received by the Court on October 8, 2018. Hence, in the Resolution[29] dated October 15, 2018, the Court declared the case submitted for decision.

The parties submitted the following issue for the Court's decision:

> Whether or not petitioner is entitled to a refund in the amount of ₱24,614,209.55 allegedly representing the total disallowance of the excess and unapplied input VAT payments for the first quarter of TY 2014.[30]

Petitioner seeks for the refund of excess/unutilized input VAT it incurred/paid during the 1st quarter of TY 2014 in the total amount of ₱24,614,209.55, which pertains to the portion disallowed by respondent upon acting on petitioner's administrative claim for the said period. Petitioner's total claim for refund based on its administrative claim amounted to ₱47,171,347.70,[31] out of which only ₱22,557,138.15 was recommended for issuance of TCC.[32]

This Court must first resolve its jurisdiction over the case.

In claiming input VAT refund or tax credit attributable to zero-rated or effectively zero-rated sales, the pertinent provisions of law are Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which state:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.*

-

---

[27] *Ibid.*, pp. 1216-1224.
[28] *Ibid.*, pp. 1231-1257.
[29] *Ibid.*, p. 1260.
[30] *Joint Stipulation of Facts and Issues*, Docket, Vol. I, p. 431.
[31] Exhibit "P-7", Docket, Vol. II, pp. 708 to 712.
[32] Exhibit "P-19", *Ibid.*, p. 725.

L

> (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
>
> (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."

As explicitly stated under the above-quoted Section 112 of the NIRC, the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR

L

within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st quarter of TY 2014 which ended March 31, 2014. Counting two years from the end of said quarter, petitioner had until March 31, 2016 within which to file its administrative claim for refund/issuance of TCC of its unutilized excess input VAT attributable to its zero-rated sales.

Clearly, petitioner's administrative claim for refund/TCC covering the 1st quarter of TY 2014 filed on March 30, 2016[33] is well within the two-year prescriptive period.

As to 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 120 days from the date of the submission of the complete documents in support of the application for tax refund/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 this Court 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 tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

Accordingly, from the filing of petitioner's administrative claim on March 30, 2016, respondent had one hundred twenty (120) days or until July 28, 2016 to act on the said claim. Since respondent failed to act on the said claim on or before July 28, 2016, petitioner had 30 days or until August 29, 2016[34] within which to file its judicial claim before this Court. Thus, petitioner's judicial appeal by way of a Petition for Review was, likewise, timely filed on August 26, 2016.[35]

It must be noted that respondent was able to act on petitioner's administrative claim but the former's Denial

---

[33] Exhibit "P-7", *Ibid.*, pp. 708 to 712.
[34] August 27, 2016 fell on a Saturday.
[35] *Dockets*, Vol. I, p. 10.

Letter was only received by the latter on August 3, 2016,[36] which is six (6) days beyond the 120-day period prescribed by law. This decision by respondent was the basis of petitioner in determining the amount prayed for in its judicial appeal. Nevertheless, the petitioner accordingly filed its administrative and judicial claims within the reglementary periods provided by law.

Now, in resolving the issue raised, based on the foregoing provisions of Section 112, in order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

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

The second requisite has already been thoroughly explained and complied with by petitioner.

Petitioner also complied with the first requisite. Petitioner is a VAT-registered entity with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000048993 duly issued by respondent.[37]

The third requisite requires that the taxpayer must have zero-rated or effectively zero-rated sales.

Petitioner is registered with the Securities and Exchange Commission (SEC) with Company Registration No. CS200414509 with the primary purpose to carry on, either solely or in co-venture with others, the business of

[36] Exhibit "R-3", BIR Records, p. 386.
[37] Exhibit "P-39".

ſ

searching, prospecting, exploration and location of ores and mineral resources and to conduct all ground and airborne geophysical surveys, geochemical surveys, and other works or means commonly regarded as exploration work for the purpose of determining the existence of mineral resources, extent, quality and quantity and the feasibility of mining them for profit; or applying for exploration permit, and mineral production sharing agreement and other mineral agreements; and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all kinds of ores, metals, 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, shares of stocks of mining companies with interest in mines in the same area, and other property, both real and personal, and generally to do everything necessary, suitable or proper for the accomplishment of any of the purpose stated herein, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation under the provisions of the mining laws and other relevant laws.[38]

Petitioner is likewise registered with the Board of Investments (BOI) as a "New Producer of Copper Concentrate", with BOI Certificate of Registration No. 2006-158.[39]

Petitioner alleges that for the 1st quarter of TY 2014, it exported 100% of its copper concentrates,[40] the export sales proceeds thereof were paid for in acceptable foreign currency which were inwardly remitted to the Philippines and 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, which provides:

---

[38] Exhibit "P-2", *Supra,* note 6.
[39] Exhibit "P-3", *Supra,* note 7.
[40] Exhibit "P-4", *Dockets*, Vol. II, pp. 700 to 702.

L

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – x x x
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> > (a) *Export Sales.* - The term "export sales" means:
> >
> > > (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); xxx"

Based on the afore-quoted provision, 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 BSP.

Corollary to the first requisite, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended,

L

provide that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "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;
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" (*underlining supplied*)

L

"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

xx xx xx

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;" (*underlining supplied*)

L

In addition to the above requirements, the invoices must be duly registered with the BIR as prescribed under 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 or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) 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"

> "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."

Pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), (2)(c), and (3) of the same Code and Sections 4.113-1(A)(1), B(1), and (2)(c) of RR No. 16-05, as amended, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: **a)** the sales invoice as proof of sale of goods; **b)** bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and **c)** bank credit advice, certificate of bank remittance or any other document proving payment for

L

the goods in acceptable foreign currency or its equivalent in goods and services.

Further, the sales invoices supporting the export sales must be 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.

Petitioner's Amended Quarterly VAT Return for the 1st quarter of TY 2014 reflected zero-rated sales in the amount of ₱3,514,604,334.74.[41] Based on petitioner's Schedule of Zero-Rated Sales[42] for the quarter ending March 31, 2014, the amount of ₱3,514,604,334.74 zero-rated sales, equivalent to US$78,375,309.63, was earned from the following customers:

Customer	In PHP	Equivalent in USD
Mitsui & Co., Ltd.	₱ 633,054,504.77	$ 14,036,685.25
MRI Trading AG	2,422,911,973.58	54,063,162.79
Ocean Partner UK Limited	467,000,432.76	10,468,514.52
Philippine Associated Smelting & Refining Corporation	(8,362,576.37)	(193,052.93)
Total	**₱ 3,514,604,334.74**	**$ 78,375,309.63**

To support its reported zero-rated sales, petitioner submitted various documents such as sales invoices, export documents (i.e. bills of lading and export declaration),[43] and certification of inward remittances,[44] which were examined by the Court-commissioned Independent Certified Public Accountant ("ICPA"), Mendoza Querido & Co., through its Partner, Mr. Emmanuel Y. Mendoza.

However, a scrutiny of petitioner's supporting documents and the ICPA report[45] leads us to disallow the entire zero-rated sales amounting to ₱3,514,604,334.74 due to the following reasons:

---

[41] Exhibit "P-37-1".
[42] Exhibit "P-35".
[43] Exhibits "P-35-1" to "P-35-30".
[44] Exhibit "P-5", *Dockets,* Vol. II, pp. 703 to 706, and Exhibit "P-38".
[45] Exhibit "P-28", *Ibid.*, pp. 521 to 599.

L

Exhibit No.	Customer	Invoice No.	Date	Amount in US$	Amount in Php
Amount of sales per schedule CANNOT be TRACED to the supporting VAT sales invoice					
P-35-1 to 3	MRI Trading AG	5081	1/17/2014	***469,636.04***	***20,551,273.21***
Amount of sales per schedule CANNOT be TRACED to the supporting VAT sales invoice and the amount of inward remittance was deducted with Customer Charges without supporting documents					
P-35-22 to 25	MRI Trading AG	5173	3/31/2014	8,842,115.60	396,259,410.49
		5182	3/31/2014	9,038,904.81	405,078,519.12
		Subtotal		***17,881,020.41***	***801,337,929.61***
Zero-rated sales supported with VAT sales invoice and export documents but the amount of inward remittance was deducted with Customer Charges without supporting documents					
P-35-6 to 8	Ocean Partner UK Limited	5159	2/27/2014	10,468,514.52	467,000,432.76
P-35-9 to 11	MRI Trading AG	5164	3/20/2014	9,236,956.50	412,476,292.36
P-35-12 to 14	MRI Trading AG	5165	3/28/2014	8,474,115.63	383,792,696.81
P-35-15 to 18	MRI Trading AG	5166	3/20/2014	9,185,257.97	410,489,178.51
		5167	3/20/2014	8,998,397.33	402,138,376.59
		Subtotal		***46,363,241.95***	***2,075,896,977.03***
Zero-rated sales supported with VAT sales invoice but DATE and AMOUNTS are UNREADABLE					
P-35-26 to 28	MRI Trading AG	5080	nil	***(182,221.09)***	***(7,873,773.51)***
Zero-rated sales supported with VAT sales invoice but DATE is UNREADABLE and export documents show that the goods were only SHIPPED LOCALLY to Isabel, Leyte					
P-35-4 to 5	Philippine Associated Smelting & Refining Corporation	5100	nil	27,257.63	1,174,667.70
P-35-29 to 30	Philippine Associated Smelting & Refining Corporation	5107	nil	(220,310.56)	(9,537,244.07)
		Subtotal		***(193,052.93)***	***(8,362,576.37)***
Zero-rated sales WITHOUT proof of foreign currency inward remittance					
P-35-19 to 21	Mitsui & Co., Ltd.	5172	3/20/2014	***14,036,685.25***	***633,054,504.77***
		GRAND TOTAL		**78,375,309.63**	**3,514,604,334.74**

A bulk of the disallowances mentioned above was due to the fact that various amounts of Customer Charges were deducted from the corresponding foreign currency inward remittances which were not supported with any documents. Even if the amounts per sales invoice was accordingly traced to foreign currency inward remittances as summarized in Annex A-2 of the ICPA Report,[46] a portion therein shows that significant amounts of Customer Charges were deducted from the invoice price before arriving at the net remittances made on various dates. These amounts are too significant to be waived for further perusal. Since petitioner did not present any supporting documents to show that these Customer Charges were actually deducted from the total amount due per sales invoice, the Court cannot be convinced that the alleged corresponding foreign currency inward remittance actually pertains to the zero-rated sales

[46] Exhibit "P-28", *Ibid.*, pp. 547 to 548.

L

reported in the Amended 1st Quarterly VAT Return for TY 2014.

As for the zero-rated sales which were disallowed on the ground that the amount cannot be traced to the supporting VAT sales invoice ("SI"), it must be noted that in the same Annex A-2 of the ICPA Report, the discrepancies noted between the amount per Schedule of Zero-Rated Sales for the 1st quarter of TY 2014[47] and the invoice amount per SI Nos. 5081, 5173, and 5182 were reported either in the previous or subsequent quarters. However, petitioner did not submit these previous quarter returns and other corroborating documents for the previous and subsequent quarter returns *(i.e. reconciliation schedule of zero-rated sales and sales invoices)* to verify that the discrepancies noted were actually traceable to other quarters and thereby satisfactorily account for the zero-rated sales in question.

In fine, the pieces of evidence show that the total zero-rated sales reported by petitioner in the Amended 1st Quarterly VAT Return for TY 2014 must be disallowed for VAT refund purposes. There being no valid zero-rated sales pursuant to Section 106(A)(2)(A)(1) of the NIRC of 1997, as amended, the claimed input VAT allegedly attributable thereto cannot be refunded.

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

SO ORDERED.

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

I CONCUR:

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

[47] Exhibit "P-35".

(Took no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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