REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CORAL BAY NICKEL CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 7022** Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 10 2008 1:00 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Under the Cross Border Doctrine, which the Philippine VAT system adheres, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Consistent with the aforesaid doctrine, sales of goods, properties and services by a VAT-registered supplier from the custom territory to an ECOZONE enterprise shall be treated as export sales. Said sales therefore, shall be subject to VAT at zero percent (0%) rate, which necessarily mean, no output VAT had to be shifted to or passed on to said ECOZONE enterprise. Conversely, no input VAT will be paid by a PEZA-registered enterprise from said purchases of goods and services.

THE CASE

This is a Petition for Review filed by Coral Bay Nickel Corporation (hereafter "petitioner") praying for a refund in the aggregate amount of P50,124,086.75, representing the VAT input taxes paid or incurred on its purchases of goods and services attributable to its zero-rated sales for the period May 1, 2002 to December 31, 2002.

THE FACTS

The facts of the case, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing by virtue of Philippine laws, with principal office located at Barangay Rio Tuba, Bataraza, Palawan. It is registered with the Bureau of Internal Revenue ("BIR") as a Value-Added Tax ("VAT") entity with TIN 005-961-540 and Certificate of Registration No. OCN 2002-035-0000296 issued on July 2, 2002 by the BIR. Petitioner is likewise registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone Export Enterprise, at the Rio Tuba Export Processing Zone, with PEZA Certificate of Registration No. 02-072 *(Exhibit "C")*, engaged in the manufacture of nickel/cobalt mixed sulfide. Oal

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR") vested with authority to exercise the functions of said office, including, among others, 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, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other court processes.

For the 3rd and 4th quarters of calendar year ("CY") 2002, petitioner filed with the BIR its original VAT returns declaring unutilized input taxes from domestic purchases of capital goods, other than capital goods, and services, in the aggregate amount of P50,325,934.19, detailed as follows:

Original VAT Returns

2002	Date Filed with the BIR	Input VAT	Exhibit
3rd Quarter	October 25, 2002	P40,097,336.82	"J"
4th Quarter	January 22, 2003	10,228,597.37	"P"
Total		P50,325,934.19	

On August 5, 2003, petitioner amended its VAT returns, declaring unutilized input taxes from domestic purchases of capital goods, other than capital goods, and services for the 3rd and 4th quarters of 2002, in the reduced aggregate amount of P50,124,086.75, detailed as follows:

Amended VAT Returns

2002	Date Filed with the BIR	Input VAT	Exhibit
3rd Quarter	August 5, 2003	P39,978,763.87	"K"

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4th Quarter	August 5, 2003	10,145,322.88	"R"
Total		P50,124,086.75	

On June 14, 2004, petitioner filed with respondent's Revenue District Officer, Revenue Region No. 6, Revenue District No. 036 an administrative claim for refund of VAT input taxes on its domestic purchases of capital goods, other than capital goods and services, for the period May 1, 2002 to December 31, 2002.

For failure of the respondent to act on petitioner's claim for refund, on July 8, 2004, petitioner elevated its case to this Court by way of a Petition for Review.

In his Answer, respondent, by way of special and affirmative defenses, alleged that taxes are presumed to have been collected in accordance with law, hence petitioner must prove that taxes sought to be refunded were erroneously or illegally collected; petitioner must show that it complied with *Section 51(c) and (d) of the Tax Code, as amended*, that (1) the claim is filed with the CIR within the two-year period from date of payment, (2) the return of the recipient must show that the income payment received was declared as part of gross income, and (3) the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom; petitioner must show that it has

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complied with the provisions of *Sections 204 (c) and 229 of the Tax Code*; and claims for refund are construed strictly against the claimants.

Petitioner presented Jocelyn Santos, its General Accountant, and Leonardo Cuaresma, the Court-commissioned independent CPA, as witnesses, and documentary evidence, marked as *Exhibits "A"* to *"KK"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated July 20, 2006, after petitioner filed a "Motion for Reconsideration" of the Resolution dated April 25, 2006. In a "Motion for Presentation and Admission of Additional Evidence", which was granted by the Court, petitioner presented Ivan Hilario as additional witness, and additional documentary evidence, marked as *Exhibits "LL" to "WW"*, inclusive of their submarkings, which were admitted by the Court, except for *Exhibits "LL-2-C", "LL-2-E", "LL-3-D" to "LL-3-F", "LL-6-D", "LL-8-B", "LL-9-E", "LL-10-H" to "LL-10-J", "LL-16-C", "LL-16-E", "LL-17-C", "LL-19-C", "LL-20-C", "LL-20-D", "LL-20-I", "LL-20-J",* and *"LL-23-G"*, which were denied admission for petitioner's failure to present the originals thereof.

Upon manifestation of counsel for respondent that he will not present any evidence, both parties were ordered to file their simultaneous memoranda, within thirty days from notice. *acl*

Both parties having filed their respective memorandum, the case was deemed submitted for decision.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

I

WHETHER OR NOT PETITIONER INCURRED INPUT TAXES WHICH ARE ATTRIBUTABLE TO ITS ZERO-RATED TRANSACTIONS.

II

WHETHER OR NOT PETITIONER'S INPUT TAXES ARE SUFFICIENTLY SUBSTANTIATED WITH VAT INVOICES OR OFFICIAL RECEIPTS.

III

WHETHER OR NOT THE VAT INPUT TAXES BEING CLAIMED FOR REFUND/TAX CREDIT BY PETITIONER HAD BEEN CREDITED OR UTILIZED AGAINST ANY OUTPUT TAXES OR HAD BEEN CARRIED FORWARD TO THE SUCCEEDING QUARTER OR QUARTERS.

IV

WHETHER OR NOT THE PETITIONER'S SUPPLIERS OF GOODS AND SERVICES DECLARED THE SUBJECT AMOUNT AS AN OUTPUT TAX AS REFLECTED IN THEIR MONTHLY VAT RETURNS AND REMITTED THE SAME TO RESPONDENT.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF ITS EXCESS VAT INPUT TAXES OF FIFTY MILLION ONE HUNDRED TWENTY FOUR THOUSAND EIGHTY SIX PESOS AND 75/100 (P50,124,086.75) PAID FROM 1 MAY 2002 TO 31 DECEMBER 2002.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner is entitled to a tax refund of its unutilized input VAT from domestic purchases of goods and services in the amount of P50,124,086.75.

Petitioner's Arguments

Petitioner contends that under *RA 7916*, an entity duly registered with PEZA is entitled to the benefit of VAT at zero-percent rate; that pursuant to *Sections 110 (A) and (B) and 112 (A) and (B) of the NIRC of 1997, as amended*, input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes; and the CIR's failure to decide on a claim for refund/credit is tantamount to a denial of petitioner's claim, which entitles it to file the instant petition.

Respondent's Counter-Arguments

Respondent counters that petitioner must show that it has complied with the provisions of *Section 51 (c) and (d) of the Tax Code, as amended,* that (1) the claim is filed with the CIR within the two-year period from date of payment, (2) the return of the recipient must show that the income payment received was declared as part of the gross income, and (3) the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom; and that it complied with the provisions of *Sections 204 (c) and 229 of the Tax Code.*

THE COURT'S RULING

The petition is devoid of merit.

There is nothing novel in this case as the decisive issue raised herein had already been resolved by the Supreme Court in the negative.

In the recent case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc., (466 SCRA 223-226)*, the Supreme Court ruled:

> "This Court agrees, however, that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes;

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but, rather, because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.

It is important to note herein that respondent Toshiba is located within an ECOZONE. An ECOZONE or a Special Economic Zone has been described as —

> . . . [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT;

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while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

Applying said doctrine to the sale of goods, properties, and services to and from the ECOZONES, the BIR issued Revenue Memorandum Circular (RMC) No. 74-99, on 15 October 1999. Of particular interest to the present Petition is Section 3 thereof, which reads –

> SECTION 3. Tax Treatment Of Sales Made By a VAT Registered Supplier from The Customs Territory, To a PEZA Registered Enterprise. —
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> (a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (b) Sale of service. — This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.
>
> (2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:
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> (a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (b) Sale of Service. — This shall be treated subject to zero percent (0%) VAT under the "cross

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border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular.

Indubitably, no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity. The VAT treatment of sales to it, however, varies depending on whether the supplier from the Customs Territory is VAT-registered or not.

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Pursuant to the above ruling, all sales of goods or property to PEZA-registered enterprises made by VAT registered suppliers from the customs territory shall be subject to 0% VAT, pursuant to *Sec. 106(A)(2)(a)(5), of the NIRC, of 1997, as amended,* in relation to *Article*

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77(2) of the Omnibus Investments Code. While all sales of services to PEZA-registered enterprises, made by VAT registered suppliers from the customs territory, shall be subject to 0% VAT, pursuant to *Section 108(B)(3) of the NIRC of 1997, as amended,* in relation to the provisions of *RA 7916* and the "Cross Border Doctrine" of the VAT system.

In this connection, Section *106(A)(2)(a)(5) of the NIRC, of 1997, as amended*, provides:

> "SEC. 106. Value-added Tax on Sale of Goods or Properties. –
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> xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
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> (a) Export Sales. – The term 'export sales' means:
>
> xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1997, and other special laws."

Corollary thereto, *Article 77 (2) of the Omnibus Investments Code of 1987* provides:

> "ART. 77. Tax Treatment of Merchandise in the Zone. –
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> xxx xxx
>
> (2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently

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brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction."

While, *Section 108(B)(3) of the NIRC of 1997, as amended,* provides:

"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. –

xxx xxx

(B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

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(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

xxx xxx."

The Cross Border Doctrine provides that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority *(Section 2, Revenue Memorandum Circular No. 74-99).*

Since, an ECOZONE is regarded as a foreign territory by *RA 7916*, the sales of goods and services therefore by VAT registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate.

Accordingly, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. There being no input VAT paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to refund, or issuance of tax credit certificate from their purchases of goods and services.

Records show that petitioner is a PEZA registered entity, as evidenced by its PEZA Certificate of Registration No. 02-072 *(Exhibit "C").* Applying the foregoing doctrine, petitioner is therefore subject to VAT at zero percent rate. Accordingly, no output VAT shall be shifted to it; hence, petitioner is not entitled to refund or issuance of tax credit certificate from its domestic purchases of goods and services.

It bears stressing that in the aforecited *Toshiba case*, the Supreme Court, citing *Revenue Memorandum Circular No. 42-03*, categorically stated that "for invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration; should be denied". Since petitioner's claim for refund or issuance of tax credit certificate pertains to input VAT on its domestic purchases of goods and services for the period May 1, 2002 to December 31, 2002 *(Exhibits "W-1" to "W-241")*, which is after the effectivity of *Revenue Memorandum Circular No. 74-*

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99, petitioner is therefore not entitled to refund, pursuant to the *Toshiba case* and *Revenue Memorandum Circular No. 42-03.*

To allow petitioner a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, when there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enrich himself at the expense of another. *"Niguno non deue enriquecerse tortizamente condano de otro" (Ong Yong, et al. vs. David S. Tiu, et al., 375 SCRA 640).* Said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.

In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT. *Revenue Memorandum Circular No. 42-03* is clearly instructive on this matter:

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

Pursuant to *Revenue Memorandum Circular No. 42-03*, petitioner's recourse for those purchases of goods and services where it paid VAT is

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not a claim for refund against the government, or the issuance of a tax credit certificate; but to seek reimbursement of the input VAT paid from its suppliers of goods and services.

For all the foregoing, this Court therefore rules that petitioner, being a PEZA registered enterprise, is not entitled to refund or issuance of a tax credit certificate of its claim for unutilized input VAT, in the amount of P50,124,086.75, attributable to its domestic purchases of goods, other than capital goods, and services for the period May 1, 2002 to December 31, 2002.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

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

ERLINDA P. UY
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice