Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE ,
Respondent.

CTA CASE NO. 8270
For: Claim for Refund or Issuance of Tax Credit Certificate

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
JUN 1 1 2013
3:50 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 14, 2011 by Phil. Gold Processing and Refining Corp. as petitioner, against Commissioner of Internal Revenue as respondent for the Court in Division, pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

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1 Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of 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;
x x x x x x

2 Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the refund or issuance of a tax credit certificate (TCC) in the amount of ₱178,505,778.50, allegedly representing petitioner's unutilized input value-added tax (VAT) for the second quarter of the fiscal year ended June 30, 2009.

Petitioner Phil. Gold Processing and Refining Corp. is a domestic corporation duly organized and existing under Philippine laws, with business address at 3rd Floor Corinthian Plaza Condominium Bldg., 121 Paseo de Roxas, Legaspi Village, Makati City. It is in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources for export,[3] in accordance with its original Articles of Incorporation,[4] two Amended Articles of

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

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;

x x x x x x

Rule 8. 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.

x x x x x x

[3] Par. 1(d), Joint Stipulation of Facts and Issues (JSFI), Docket, p. 169.
[4] Exhibit "A-2", Docket, p. 284.

Incorporation,[5] and By-Laws,[6] all of which were approved by and filed with the Securities and Exchange Commission with Registration No. AS094-00011711. It is likewise registered with the Board of Investments (BOI) on a non-pioneer status as a "New Producer of Gold and Silver Dore,[7] under Certificate of Registration No. 2008-402[8] issued on February 7, 2008. It is also a VAT-registered entity.[9]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with the power and authority to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

On January 26, 2009, petitioner filed with the BIR its Quarterly VAT Return[10] for the second (2nd) quarter of the fiscal year ending June 30, 2009.

On July 9, 2009, the BIR Law Division received a letter[11] dated July 8, 2009, sent by SGV & Co. on behalf of petitioner, wherein the latter sought confirmation that the input taxes paid by petitioner for goods and services purchased can be claimed as a tax refund or credit.[12] The BIR, through Acting Commissioner James H. Roldan, in his letter[13] dated August 3, 2009 to SGV & Co. confirmed that the input taxes paid by petitioner may be claimed as a tax credit or refund.[14]

Thereafter, petitioner filed with the BIR its (amended) Quarterly VAT Return[15] for the 2nd quarter of the fiscal year ended June 30, 2009, showing creditable input VAT paid for

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[5] Exhibits "A" and "A-1", pp. 258-270 and pp. 271-283, respectively.
[6] Exhibits "A-3", Docket, pp. 299-311.
[7] Par. 1(f), JSFI, Docket, p. 169.

[8] Exhibit "C-1", Docket, p. 315.
[9] Par. 1(h), JSFI, Docket, p. 169; Exhibit "D", Docket, p. 322.
[10] Exhibit "J", Docket, p. 338.
[11] Exhibit "F", Docket, p. 326.
[12] Par. 1(k), JSFI, Docket, p. 169.
[13] Exhibit "G", Docket, p. 331.
[14] Par. 1(l), JSFI, Docket, p. 169.
[15] Exhibit "H", Docket, p. 335.

the said quarter in the amount of ₱178,505,778.50 on October 27, 2010.[16]

On November 18, 2010, petitioner filed with respondent, through Revenue District Office (RDO) No. 70 in Aroroy, Masbate, an application for tax credits/refunds[17] for its unutilized input VAT in the amount of ₱178,505,778.50 for the 2nd quarter of the fiscal year ending June 30, 2009. On the same date, it also filed a transmittal letter[18] submitting supporting documents for its claim.

Petitioner filed the Petition for Review before this Court on April 14, 2011 for respondent's failure to act on the former's administrative claim.

Instead of filing an answer after an extension of time to file the same had been granted by this Court, respondent filed a Motion to Dismiss for Lack of Jurisdiction[19] on May 25, 2011. This Court denied respondent's motion in a Resolution dated July 15, 2011, taking into consideration respondent's motion to dismiss and petitioner's Opposition (To Motion to Dismiss).

On July 22, 2011, respondent filed an Answer[20] interposing the following special and affirmative defenses:

> "6. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;
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> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
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> 8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108(B)(1), 112(A) and (C), 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

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[16] Par. 1(n), JSFI, Docket, p. 170.
[17] Exhibit "I-1", Docket, p. 337.
[18] Exhibit "I", Docket, p. 336.
[19] Docket, pp. 119-125.
[20] Docket, pp. 138-140.

> 9. Further, Petitioner has the burden of proving that it complied with the requirements of effectively zero-rated transactions under Section 113(A) & (B), and Revenue Regulations 16-2005 dated 1 September 2005;
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> 10. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)*;
>
> 11. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)*."

Petitioner filed its Pre-trial Brief[21] on September 12, 2011; while respondent filed her Pre-trial Brief[22] on September 15, 2011. The pre-trial conference was terminated upon the Court's approval of the Joint Stipulation of Facts and Issues[23] in a Resolution[24] dated October 6, 2011.

On November 9, 2011, upon motion[25] of petitioner, this Court appointed Atty. Clifford E. Chua as Independent Certified Public Accountant (CPA).[26]

During trial, petitioner presented two (2) witnesses, namely: Atty. Clifford E. Chua and Atty. Juanita Lilet Dato-Abuel.

Petitioner filed its Formal Offer of Documentary Exhibits[27] on January 10, 2012, offering Exhibits "A" to "HH-1". In a Resolution[28] dated February 15, 2012, this Court

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[21] Docket, pp. 142-149.
[22] Docket, pp. 150-152.
[23] Docket, pp. 168-170.
[24] Docket, p. 172.
[25] Docket, pp. 179-181.
[26] Minutes, Docket, p. 190.
[27] Docket, pp. 237-257.
[28] Docket, pp. 455-456.

admitted all the exhibits, inclusive of their sub-markings, except the following: Exhibits "G-3-b", "L-1", "M-2", "R", "U", "CC", "DD-78", "DD-141", and "R-1".

In the Resolution[29] dated March 23, 2012, this Court partially granted petitioner's Motion for Partial Reconsideration, admitting Exhibits "M-2", "U", "CC", and "DD-78". Petitioner formally rested its case, with the admission of its documentary exhibits.

The documentary evidence formally offered and admitted are as follows:

Exhibits	Description
A	Certificate of Filing of Amended Articles of Incorporation of Phil. Gold Processing Corp. issued by the SEC on August 19, 2009 with the Amended Articles of Incorporation of PGPRC attached.
A-1	Certificate of Filing of Amended Articles of Incorporation (with the Amended Articles of Incorporation attached) of Petitioner showing change of corporate name to "Phil. Gold Processing Corp." (formerly LFT Processing Corp.) issued by the SEC on April 24, 1997.
A-2	Original Articles of Incorporation of Petitioner approved by and registered with the SEC
A-3	Original By-Laws of Petitioner approved by and registered with the SEC
B	Secretary's Certificate issued by Ms. Rebecca de Guzman, the Asst. Corporate Secretary of Petitioner, certifying to the presence of a Board Resolution authorizing the filing of the petition at bar by Ms. Juanita Lilet Dato-Abuel
C	Letter dated February 7, 2008 sent by the Board of Investments to Petitioner informing the latter of the Board's approval of its application for registration.
C-1	Certificate of Registration No. 2008-042 issued by BOI in favour of Petitioner dated February 7, 2008, as a new producer of Gold and Silver Dore on a Non-pioneer status with Pioneer Incentives.

[29] Docket, pp. 472-474.

D	Certificate of Registration issued by the BIR to PGPRC on March 15, 1996.
E	Certification issued by the BOI on January 27, 2010 to the effect that Petitioner exported 100% of its total sales for calendar year January 1, 2009 to December 31, 2009.
E-1	Letter dated January 27, 2010 addressed to the Commissioner of the BIR from BOI's Ms. Erlinda Arcellana, Director of Incentives Department, transmitting the Certification marked as Exh. "E".
E-1-a	Receipt stamp of BIR Records Management Division with date February 1, 2010 on Exh. "E-1".
F	Letter dated July 8, 2009 from SGV&Co., in behalf of Petitioner, addressed to the Bureau of Internal Revenue.
G	Letter dated August 3, 2009 addressed to Sycip Gorres Velayo & Co. sent by the BIR, identified as DA (VAT-073) 435-2009, in reply to Exh. "F".
G-1 to G-3	Pages 2-4, respectively of Exhibit "G".
G-3-a	Second paragraph of Exhibit "G-3".
G-3-b	Signature of James H. Roldan, Assistant Commissioner for Legal Service of the BIR, on Exhibit "G-3"
H	Quarterly Value Added Tax Return (Amended), BIR Form 2550Q, for the period October 1, 2008 to December 31, 2008 filed by Petitioner with the BIR
H-1	Entries on Lines 15-29 on Exh. "H"
H-2	Signature of Juanita Lilet Dato-Abuel on Exhibit "H"
H-3	Receipts Stamp of the BIR on Exh. "H" showing the date October 27, 2010.
I	Letter dated November 15, 2010 sent by Petitioner to BIR's Revenue District Office No. 70 claiming for refund and/or issuance of tax credit certificate for unutilized creditable input taxes paid for the 2nd Quarter of fiscal year ending June 30, 2009 and listing the supporting documents transmitted.

I-1	BIR Form 1914 of Petitioner filed with the letter marked as Exhibit "I"
J	(Original) Quarterly VAT Return for the 2nd Quarter of fiscal year ending June 30, 2009 filed by Petitioner
J-1	Entries on Line 15-29 of Exh. "J"
J-2	Signature of Juanita Lilet Dato-Abuel on Exh. "J"
J-3	BIR Receipt stamp on Exhibit "J"
K	2nd Amended Quartely VAT Return for the 2nd Quarter of fiscal year ending June 30, 2009 filed by Petitioner with the BIR
K-1	Entries on Lines 15-29 of Exhibit "K"
K-2	Signature of Juanita Lilet Dato-Abuel on Exhibit "K"
K-3	BIR Receipt stamped on Exhibit "K"
K-4	Quarterly VAT Return attached to Exh. "K"
L	(Original) Quarterly VAT Return for the 1st quarter of fiscal year ending June 30, 2009
L-1	Entries on Lines 15-29 of Exhibit "L"
L-2	Signature of Ms. Juanita Lilet Dato-Abuel on Exh. "L"
L-3	BIR receipt stamped on Exh. "L"
M	Amended Quarterly VAT Return for the 1st quarter of fiscal year
M-1	Entries on Lines 15-29 of Exhibit "M"
M-2	Signature of Juanita Lilet Dato-Abuel on Exhibit "M"
M-3	BIR Receipt stamped on Exh. "M"
M-4 to M-11	Supporting documents attached to Exhibit "M"
N	(Original) Quarterly VAT Return for the 3rd Quarter of Fiscal year ending June 30, 2009
N-1	Entries on Lines 15-29 of Exh. "N"
N-2	Signature of Juanita Lilet Dato-Abuel on Exh. "N"
N-3	BIR Receipt stamped on Exh. "N"

O	Amended Quarterly VAT Return for the 3rd Quarter of Fiscal Year ending June 30, 2009
O-1	Entries on Lines 15-29 on Exh. "O"
O-2	Signature of Juanita Lilet Dato-Abuel on Exh. "O"
O-3	BIR Receipt stamped on Exh. "O"
P	(Original) Quarterly VAT Return for the 4th Quarter of Fiscal Year ending June 30, 2009.
P-1	Entries on Lines 15-29 of Exh. "P"
P-2	Signature of Juanita Lilet Dato-Abuel on Exh. "P"
P-3	BIR Receipt stamped on Exh. "P"
Q	Amended Quarterly VAT Return for the 4th Quarter of Fiscal Year ending June 30, 2009
Q-1	Entries on Lines 15-29 of Exh. "Q"
Q-2	Signature of Juanita Lilet Dato-Abuel on Exh. "Q"
Q-3	BIR Receipt stamped on Exh. "Q"
R	Letter dated February 18, 2010 from Petitioner to JP Elite Products & Services, Inc.
R-1	4th paragraph of Exh. "R"
S	Official Receipt No. 018739 issued to Phil. Gold Processing & Refining Corp. by SGV&Co. dated October 28, 2011
S-1	The words "Zero-rated" written on Exh. "S"
T	Letter of Authority (LOA-070-2011-00000005) dated June 15, 2011 from BIR Regional Director Diosdado Mendoza addressed to Phil. Processing Corp.
U	Audited Financial Statement of PGPRC for Fiscal year ending June 30, 2009 filed with the SEC and BIR
V (also Exh. C)	Board of Investments Certificate dated February 7, 2008
W (also Exh. "D")	Bureau of Internal Revenue Certificate of Registration
X, X-1 to	Official Receipts issued by PGPRC for the 1st and

X-2	2nd Quarters of FY 2010 (July 1 to September 30, 2009 and October 1 to December 31, 2009)
Y	BIR Form 2550Q for 1st Quarter of FY 2010 (July 1 to September 30, 2009)
Y-1	BIR Form 2550Q for 2nd Quarter of FY 2010 (October 1 to December 31, 2009)
Z (also Exh. K)	BIR Form 2550Q for 2nd Quarter of FY 2009 (October 1 to December 31, 2008)
AA	PGPRC's Books of Accounts for Sales
BB	PGPRC's Books of Accounts for Purchases
CC	BIR Form 2550Q for 2nd Quarter of FY ending June 30, 2008 (October 1 to December 31, 2007)
CC-1	BIR Form 2550Q for 3rd Quarter of FY ending June 30, 2008 (January 1 to March 31, 2008)
CC-2	BIR Form 2550Q for 4th Quarter of FY ending June 30, 2008 (April 1 to June 30, 2008)
CC-3 (also Exh. M)	BIR Form 2550Q for 1st Quarter of FY 2009 (July 1 to September 30, 2008)
DD-1 to DD-64	Official Receipts for Local Purchases made by PGPRC during the period October 1, 2008 to December 31, 2008
DD-65 to DD-141	Documents for Importations made by PGPRC during the period October 1, 2008 to December 31, 2008
EE, EE-1 to EE-20	Proofs of Inward Remittance for PGPRC's Export sales during the calendar year 2009
FF	Affidavit of Atty. Clifford E. Chua dated December 12, 2011
FF-1	Signature of Atty. Clifford E. Chua on Exh. "FF"
GG	Report or Results of Procedure Performed submitted by the Independent Certified Public Accountant, Atty. Clifford E. Chua, dated December 8, 2011
GG-1	Signature of Atty. Clifford E. Chua on page 8 of Exh. "GG"
HH	Affidavit of Atty. Juanita Lilet Dato-Abuel dated December 12, 2011

HH-1 Signature of Juanita Lilet Dato-Abuel on page 20 of Exh. "HH"

On the other hand, during the September 12, 2012 hearing, respondent, through counsel, manifested that she will submit this case for decision without presenting evidence on the ground that she has not received the Report of Investigation of the instant case.

On November 9, 2012, the case was submitted for decision, considering the respective Memorandum of petitioner and respondent, which were both filed on November 6, 2012.[30]

The parties jointly submitted the following issues[31] for this Court's scrutiny:

> "a) Whether or not the filing of the instant petition for review is already time-barred.
>
> b) Whether or not petitioner is entitled to refund and/or issuance of a tax credit certificate in the total amount of One Hundred Seventy Eight Million Five Hundred Five Thousand Seven Hundred Seventy Eight Pesos and Fifty Centavos (Php178,505,778.50) representing unutilized or unapplied creditable input taxes for the period October 1 to December 31, 2008."

Petitioner asserts that the petition was timely filed pursuant to the Supreme Court ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[32] It further argues that it is entitled to a refund or issuance of a tax credit certificate for unutilized or unapplied creditable input taxes it paid during the period covering October 1 to December 31, 2008.

Respondent maintains that the complete documents were submitted by petitioner only in July 2011, and the 120-day period accorded to the BIR Commissioner under Section

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[30] Resolution dated November 9, 2012, Docket, p. 542.
[31] Par. 2, JSFI, Docket, p. 170.
[32] G.R. No. 184823, October 6, 2010.

112(C) of the 1997 Tax Code to decide on its claim for input VAT refund should be reckoned from the said date; hence, the filing of the instant Petition for Review on April 14, 2011 was premature and would warrant a dismissal inasmuch as no jurisdiction was acquired by this Court. Moreover, respondent points out that tax refund being in the nature of tax exemption is construed *strictissimi juris* against petitioner.

Section 112 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "SEC. 112. *Refunds of Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax**: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of**

> **submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof." *(Emphasis supplied)*

Based on the foregoing, petitioner had two (2) years from December 31, 2008 or until December 31, 2010 within which to file an administrative claim for refund or issuance of a tax credit certificate covering the second quarter (October to December 2008) of the fiscal year ending June 30, 2009. In this case, petitioner filed its administrative claim together with the pertinent documents supporting the claim on November 18, 2010. Then respondent had one hundred twenty (120) days or up to March 18, 2011 to act on it, but failed to do so. Thus, petitioner sought judicial relief on April 14, 2011 with this Court three days before the lapse of the thirty-day period prescribed by law within which to appeal the unacted claim.

The records show that the first issue had already been resolved by this Court in the Resolution[33] dated July 15, 2011, denying respondent's Motion to Dismiss for Lack of Jurisdiction. This Court ruled in favor of petitioner, citing therein the *Aichi case*, to wit:

> "In the Aichi case,[34] the Supreme Court ruled that in case of tax refunds under Section 112 of the 1997 Tax Code, as amended, the phrase 'within two years applies only to the filing of the administrative claim for refund and not to the filing of the judicial claim. Pertinent portions thereof are as follows:
>
> > 'There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person whose sales are zero-rated or effectively zero-rated may, within two 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.' **The phrase 'within two (2) years xxx apply for the issuance of tax credit certificate or refund' refers to applications for refund/credit filed with the** ℓ

[33] Docket, pp. 134-137.
[34] G.R. No. 184823, October 6, 2010.

> **CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.**
>
> **In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**
>
> In this case, the claim for refund corresponds to October 1 to December 31, 2008, the two-year period thereof expired on December 31, 2010; thus, the filing of the administrative claim on November 18, 2010, was made within period fixed by law. Then, respondent is given 120 days from November 18, 2010 or until March 18, 2011 within which to act upon the claim. Since, respondent did not act on petitioner's claim, petitioner had thirty days from March 18, 2011 or until April 17, 2011 to file its judicial claim for refund. This means that the filing of the instant petition was well within the prescriptive period provided for by law." *(Emphasis supplied)*

However, respondent shifts the argument of this case from being prescribed to having been filed prematurely. She alleges in her Memorandum that petitioner completed the submission of the documents only in July 2011; thus, the 120-day period prescribed under Section 112(C) of the NIRC of 1997 must be reckoned from the said date. Respondent concludes that this case was prematurely filed by petitioner.

On the other hand, petitioner contends that the instant petition was timely filed and likewise asserts that this issue was already ruled upon by this Court in the Resolution dated July 15, 2011.

This Court agrees with petitioner.

On November 18, 2010, petitioner submitted with respondent, through Revenue District Office No. 70 in Aroroy, Masbate, a Letter[35] dated November 15, 2010 attaching therewith supporting documents for the administrative claim. On June 28, 2011, petitioner received a Letter of Authority[36] issued by respondent on June 15, 2011 concerning the administrative claim, exactly seventy-five (75) days after the filing of the instant Petition for Review and more than a month after respondent filed her Motion to Dismiss for Lack of Jurisdiction. Consequently, petitioner submitted again supporting documents pursuant to the said Letter of Authority.

Petitioner's witness made the following statements in her testimony:[37]

> "Atty. Noel:
> Q. Now, these documents that you submitted to the BIR on November 18, what was your basis for the inclusion of the documents that you submitted?
>
> Atty. Abuel:
> A. We based our transmittal of documents on the checklist that the BIR has given to us. This is already for the Admin Claim with the BIR so we already know what are the documents that should be submitted to the BIR.
>
> Atty. Noel:
> Q. And just to clarify, Atty. Dekit earlier asked you if you furnished copy of documents to the examiner who came to your office and you stated that you did submit but these were again?

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[35] Exhibit "I", Docket, p. 336.
[36] Exhibit "T", Docket, p. 396.
[37] TSN, December 14, 2011 hearing, pp. 29-30.

Atty. Abuel:
A. Another copy of the initial documents that we submitted."

The term "complete documents" under Section 112(C) of the NIRC of 1997 should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that respondent ought to know the tax records of all taxpayers.[38]

Suffice it to say that on November 18, 2010, petitioner completed the submission of documents required by respondent in order for petitioner to claim a refund or issuance of a tax credit certificate. Thus, the Petition for Review was neither filed prematurely nor beyond the prescribed period.

Under Section 112(A) of the NIRC of 1997, in order to be entitled to a refund or tax credit of unutilized input VAT, the following requisites must be satisfied:

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

Petitioner is a VAT taxpayer[39] engaged in the business of processing, milling, crushing, refining, smelting and

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[38] *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case Nos. 7846 and 7865, January 16, 2012.
[39] Exhibit "D".

concentrating mineral resources for export[40] and is registered with the Board of Investments as a "New Producer of Gold and Silver Dore".[41]

For the first[42] and second[43] quarters of fiscal year ending June 30, 2010, petitioner allegedly exported 100% of its mineral products to Metalor Technologies S.A. Refining Corp. in Switzerland and generated sales therefrom in the respective amounts of ₱1,402,634,124.57[44] and ₱1,850,249,674.87[45] or in the sum of ₱3,252,883,799.44. These sales were purportedly paid in U.S. Dollars through inward remittance, in accordance with the rules of the *Bangko Sentral ng Pilipinas*. Petitioner posits that such export sales are subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties*. –
>
> 6. *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:
>
> 7. *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)."

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[40] Par. 1(d), JSFI, Docket, p. 169.
[41] Exhibit "C".
[42] July 1, 2009 to September 30, 2009.
[43] October 1, 2009 to December 31, 2009.
[44] Exhibit "Y".
[45] Exhibit "Y-1".

Thus, in order for an export to qualify as zero-rated, the following conditions must be present:

1. there was a 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, Section 113(A)(1), (B)(1), (2)(c), and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A)(1), (B)(1), and (2)(c) of Revenue Regulations (RR) No. 16-05, provides 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;

xxx xxx xxx

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

"SEC. 4.113-1. *Invoicing Requirements.* —

(A) *A VAT-registered person shall issue*:

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

> (c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

Based on the afore-quoted provisions, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:

(1) the sales invoice as proof of sale of goods;
(2) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
(3) the bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

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

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.

It is undisputed that petitioner is a VAT-registered entity. While petitioner proffered before this Court documents such as official receipts,[46] HSBC Certification,[47] and BNP Paribas Consolidated Cash Statements[48] proving its receipt of foreign currency remittances, however, the same cannot be possibly linked to its alleged export sales for the first and second quarters of fiscal year 2010 since petitioner failed to submit VAT zero-rated sales invoices and export documents such as export declarations and bills of lading or airway bills. Thus, petitioner's alleged export sales for the

[46] Exhibits "X" to "X-22".
[47] Exhibits "EE".
[48] Exhibits "EE-1" to "EE-20".

first and second quarters of fiscal year 2010 in the amount of ₱3,252,883,799.44 cannot qualify for VAT zero-rating and the alleged input VAT incurred by petitioner for the second quarter of fiscal year 2009 in connection thereto in the amount of ₱178,505,778.50 cannot be refunded.

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[49]

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

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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
Chairperson

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[49] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.,* 309 SCRA 87; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.,* 244 SCRA 332; *Commissioner of Customs vs. Court of Tax Appeals,* 328 SCRA 822.

C E R T I F I C A T I O N

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice