REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

RIO TUBA NICKEL MINING CORPORATION, Petitioner,	**CTA CASE NO. 9127**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MANAHAN,** and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 08 2019

x - x

2:30 p.m.

AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For the Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 30 January 2018)**, filed on February 15, 2018, without petitioner's comment as per Records Verification dated March 20, 2018; and

2. petitioner's **Motion for Partial Reconsideration**, filed through registered mail on February 15, 2018 and received by the Court on February 23, 2018, with respondent's **Opposition (Re: Motion for Reconsideration)**, filed on March 16, 2018.

Both parties move for the reconsideration of the Decision promulgated on January 30, 2018, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is entitled to a tax refund in the amount of **₱2,077,757.45** representing its unutilized input taxes attributable to zero-rated sales for the second to four[th] quarters of CY 2013.
>
> **SO ORDERED.**"

Respondent's Motion for Partial Reconsideration

Respondent argues that the Court erred in ruling that petitioner's input value-added tax (VAT) in the amount of ₱2,077,757.45 is attributable to the valid zero-rated sales. He alleges that the law itself does not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable, otherwise, any taxpayer can credit input tax from non-essential purchases. Sec 112(A) of the National Internal Revenue Code (NIRC) of 1997 provides that what is refundable are "creditable input taxes" and in turn, these must be "attributable". It is respondent's position that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. After determining which input taxes are "creditable", the law requires a second evaluation to determine which "creditable" input taxes are "attributable". The law uses the word "directly". This means that the connection between the purchases and the finished product is "concrete" and not "imaginary" or "remote". Respondent claims that there is nothing in the decision of the Court showing the direct connection of the purchases or input tax to the finished product whose sale is zero-rated.

Respondent's motion has no merit.

Section 112(A) of the NIRC of 1997, as amended, does not require that the input taxes subject of a claim refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.[1] Moreover, it allows the allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales.[2]

In the case of *Toledo Power Company vs. Commissioner of Internal Revenue*[3], the Court ruled that not only those purchases of goods that form part of the finished product of the taxpayer can be subject of an input VAT refund, as follows:

> Section 110(A)(1) of the NIRC of 1997, as amended, provides that any input tax on the following transactions evidenced by a VAT invoice or official receipt shall be creditable against the output tax:
>
> SEC. 110. *Tax Credits.* -
>
> (A) *Creditable Input Tax.* -
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or

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[1] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8905, October 19, 2017.

[2] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* CTA Case No. 7887, February 2, 2018.

[3] CTA Case No. 8792, January 29, 2019.

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has been actually paid.

Moreover, Section 110(A)(3) of the NIRC of 1997, as amended, provides that the term "input tax" means the value-added tax due from or paid by a VAT-registered person *in the course of his trade or business* on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.

From the foregoing, it is significant to note that the NIRC did not limit input taxes to those purchases that only form part of the finished product of the taxpayer.

To the extent possible, words must be given their ordinary meaning; this is consistent with the basic precept of *verba legis.* The word "attribute", the adjective form of which is "attributable", is defined in the dictionary as "to explain as to cause or origin", in other words, "creditable input tax due or paid *attributable* to such sales" simply means that the input tax is connected with the zero-rated or effectively zero-rated sales.

Hence, when Section 112(A) of the NIRC of 1997, as amended, speaks of "creditable input tax due or paid *attributable* to such sales", it is more logical to interpret this phrase as referring to instances of an apportionment of the input VAT in mixed transactions (taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales) rather than on the classification of the purchase/expense/cost. However, respondent seem to have confused the phrases "attributable to such sales" and "directly and entirely attributed" to mean "direct costs" which applies to the computation of gross income.

The above interpretation of the phrase *"attributable* to such sales", to simply mean that the input tax is connected with a taxpayer's zero-rated or effectively zero-rated sales and not to its taxable or exempt sales, is likewise within the context of Section 112(A) of the NIRC of 1997, as amended, taking into consideration the proviso which states 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". Hence, Section 112(A) of the NIRC of 1997, as amended, provides for a scenario where the taxpayer is engaged in (1) purely zero-rated or effectively zero-rated sales; (2) engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales and the creditable input tax due or paid can be attributed to each of the transactions; and (3) engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales but the creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.,* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning. (*Emphasis supplied*)

In the instant case, petitioner did not provide for specific attribution of creditable input taxes, hence, direct and entire attribution of creditable input taxes to any of its VATable and zero-rated sales transactions cannot be made. Accordingly, petitioner's creditable input taxes amounting to ₱12,155,895.54, as allowed by the Court, were first applied to the output tax due of ₱9,739,524.03. The amount credited to the output tax due already constitutes the input taxes allocated to petitioner's VATable sales and a portion of the input taxes allocated to zero-rated sales. Thus, the remaining creditable input taxes amounting to ₱2,416,371.51 represent the balance of the input taxes which were allocated to zero-rated sales. However, the Court found that only the amount of ₱2,077,757.45 is allocable to the valid zero-rated sales.

Finding no reversible error, the Court finds that the assailed Decision on the matter must not be disturbed.

Petitioner's Motion for Partial Reconsideration

Petitioner contends that its evidence which adequately support its claims were not properly considered by the Court. It also asserts that while petitioner's claim for input VAT for the first quarter of calendar year (CY) 2013 may be considered prescribed, the same principle of prescription cannot also be applied to its zero-rated sales for lack of legal basis. The NIRC only provides prescription of input VAT claims but does not contain any provision on prescription of zero-rated sales. Petitioner further states that the *Coral Bay* case which revolves around the Cross Border Doctrine as specifically applied to Philippine Economic Zone Authority (PEZA) registered entities finds no application to zero-rated Board of Investments (BOI)-registered export entities like petitioner which are not similarly situated as VAT exempt PEZA entities.

Petitioner's motion is partly meritorious.

Petitioner submits that its other evidence which sufficiently support its claims were not properly considered by the Court, as follows:

a. Exhibits "P-3534" and "P-35[9]9" which the Court found to indicate sales amounts that do not match those in the final invoice. Petitioner submits that the comparison of the sales amount in the export declaration is misplaced because the amount reflected therein constitutes a mere estimate of the value of the ore shipment. Petitioner would like to direct the Court's attention to Exhibits "P-3536" and "P-3601" which pertain to the Bills of Lading for the said shipment which show the volume of the ores being sold that is consistent with the volumes of ores the value of which was billed in petitioner's final invoice.

b. Exhibits "P-4688" to "P-4692" are copies of original and certified true copies of supplier's invoices which were disallowed under the 2nd paragraph on page 28 of the January 30, 2018 Decision.

c. Exhibits "P-3681" to "P-368[2]" show copies of the original Import Entry and Internal Revenue Declaration (IEIRD) and original Bureau of Customs (BOC) collection report which were disallowed by the Court of Tax Appeals (CTA) in reference to page 15 of the Independent Certified Public Accountant (ICPA) report under the 4th paragraph on page 28 of the January 30, 2018 Decision.

d. Exhibit "P-3685" shows additional payments other than that found in Exhibit "P-3686" in relation to Exhibit No. "P-3683".

e. Exhibit "P-3676" to "P-3680-A" constitute copies of the original IEIRD and corresponding original BOC collection report showing proof of VAT payment in relation to the CTA's findings on the 4th paragraph of page 30 of the January 30, 2018 Decision.

In the Affidavit of Merits of petitioner's Accounting Manager, Mary Caroline B. Lagman[4], the following points are also raised:

f. The unaccounted zero-rated sales of ₱294,958,280.48 pertain to "Other Zero Rated Income" which was inadvertently omitted in the Summary List of Sales (SLS) attached to the originally filed VAT returns.

[4] Annex I, petitioner's Motion for Partial Reconsideration and/or New Trial, Docket, Vol. II, pp. 490 to 491.

Some of the documents supporting such other income were inadvertently not considered by the ICPA.

g. The CTA disallowed certain sales of petitioner for being without supporting credit remittances. Evidence, such as petitioner's bank passbook coupled with its Bureau of Internal Revenue (BIR) registered acknowledgment receipts, are existing in petitioner's records but were not considered by the ICPA because they required the presentation of bank credit advice, which could not be found for these transactions as they may have been misplaced due to the lapse of time.

h. The documents marked by the ICPA as petitioner's Exhibit Nos. "P-3797" and "P-3837" were incompletely scanned by the ICPA because the other pages of these documents were not included in the scanned copy of the document in the ICPA's report, thus, resulting to the Court's findings of overclaimed VAT payment in the amount of ₱1,101,544.89.

The above points are further elaborated in Ms. Lagman's Judicial Affidavit.[5]

Petitioner's arguments are partially meritorious.

The Court shall discuss petitioner's arguments by grouping the above points depending on the requisite corresponding to the disallowance being sought to be reconsidered.

On disallowed zero-rated sales:

a. The Court disallowed zero-rated sales amounting to ₱83,468,740.53 on the ground that the supporting export declaration documents do not match the details in the final invoice.[6] Upon re-examination of the pieces of evidence pertaining to these disallowed sales,[7] the Court finds it proper to reconsider the same since other information in the final invoices (*i.e.*, vessel name, voyage number,

[5] Exhibit "P-4811", Docket, Vol. III, pp. 1277 to 1283.
[6] Decision, p. 23, Docket, Vol. I, p 462.
[7] Exhibits "P-3534" and "P-3599".

volume of shipment) matches the information in the corresponding bills of lading.[8] As such, the disallowance shall be lifted and the amount of valid zero-rated sales shall be increased by ₱83,468,740.53.

f. In the Decision, the Court disallowed zero-rated sales amounting to ₱294,958,280.48 for being unaccounted by petitioner.[9] Petitioner explains in its motion that what was examined by the Court was the SLS supporting the original VAT returns and not the amended VAT returns, hence, showing the difference thus disallowed. Therefore, petitioner presented the amended SLS[10] showing zero-rated sales amounting to ₱3,647,526,813.98 which now supports and tallies with the zero-rated sales declared in the amended 2013 Quarterly VAT Returns amounting to ₱3,647,526,813.97.[11] Allegedly, the difference pertains to petitioner's zero-rated other income.

In accounting for the difference of ₱294,958,280.48, petitioner presented a reconciliation of the original SLS and amended SLS[12] and the official and acknowledgment receipts[13] supporting the alleged zero-rated other income of ₱294,958,280.48, broken down as follows:[14]

		1st Quarter	2nd to 4th Quarters	Total
1)	Adjustment on final invoice due to changes in exchange rate per unit price	-	₱(16,261,694.10)	₱(16,261,694.10)
2)	Corrected name of customer due to wrong name of customer vs the supporting document. In the unaudited SLS, we added the income with the wrong buyer. We corrected the income to the right	-	40,569,945.83	40,569,945.83

[8] Exhibits "P-3536" and "P-3601".
[9] Decision, p. 23, Docket, Vol. I, p 462.
[10] Exhibit "P-4810-1 to P-4810-5", Docket, Vol. III, pp. 1030 to 1034.
[11] Slight difference of ₱0.01.
[12] Exhibits "P-4810-A to P4810-G", Docket, Vol. III, pp. 1035 to 1041.
[13] Exhibits "P-4810.1 to P-4810.235", Docket, Vol. III, pp. 1042 to 1276.
[14] Exhibit "P-4811", Q&A No. 4, Docket, Vol. III, pp. 1278-1279 and Exhibits "P-4810-A to P4810-G", Docket, Vol. III, pp. 1035 to 1041.

	customer in the Amended SLS			
3)	Corrected name of customer due to wrong name of customer vs the supporting document. We added the income to the wrong buyer but corrected this in our audited SLS	-	(42,072,913.19)	(42,072,913.19)
4)	Double deduction of VAT on Despatch Income due to erroneous imputation of VAT on zero-rated sales	₱ 3,722,254.08	24,122,834.58	27,845,088.66
5)	Ore Sales and other income which were not found in the original SLS and thus, were not considered by the ICPA	132,841,161.62	41,815,292.48	174,656,454.10
6)	Other income	14,447,144.54	95,774,254.25	110,221,398.79
	Total	**₱151,010,560.24**	**₱143,947,719.85**	**₱294,958,280.09**[15]

Based on the above table, the zero-rated other income of ₱151,010,560.24 pertaining to the prescribed claim covering the 1st quarter of CY 2013 shall be disallowed. As to the zero-rated other income of ₱143,947,719.85 covering the unprescribed claim for the 2nd to 4th quarters of CY 2013, the table shows that the said amount originated from the despatch income of ₱24,122,834.58, ore sales and other income of ₱41,815,292.48 and other income of ₱95,774,254.25.

With regard to its ore sales, petitioner did not submit the related sales invoices, export documents (bills of lading or airway bills) and proof of foreign currency remittances, hence, the same shall be disallowed. As to the despatch and other income, an examination of the official receipts (ORs) submitted shows that no amounts are written in the "VAT Zero-Rated Sales" line item in the ORs, which is a clear violation of the invoicing requirements under Section 113(B)(2)(d) of the NIRC of 1997, as amended, which provides:

[15] Difference of ₱0.39.

"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

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:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(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;

(d) **If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt:** *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale. *(Emphasis supplied)*

On the other hand, the acknowledgment receipts do not qualify as a valid support of zero-rated sales since Section 113(A)(2) of the NIRC of 1997, as amended, is clear that a VAT official receipt is to be issued for every lease of goods or properties, and for every sale, barter or exchange of services.

Hence, even if petitioner was able to account for the difference amounting to ₱294,958,280.48, the same must still be disallowed on account of prescription and for failure to comply with the invoicing requirements for zero-rated sales under the NIRC of 1997, as amended.

g. In the Decision, the Court disallowed zero-rated sales amounting to ₱128,941,504.91 on the ground of petitioner's failure to present supporting credit remittances:[16]

Exh. No.	Customer	Final Invoice No.	Invoice Date	Sales Amount per Final Invoice (in US$)	Sales Amount per Final Invoice (in Php)	Amount with Supporting US$ Credit Remittance	Disallowed Amount of Sales as Declared in SLS (in Php)
Export sales without supporting credit remittance							
P-3453	BAOSTEEL RESOURCES INTERNATIONAL CO LTD	A519	12/27/2013	$ 1,102,500.00	₱ 47,633,287.50	$ 1,102,500.00	₱ 42,588,983.20
P-3227	BAOSTEEL RESOURCES INTERNATIONAL CO LTD	A518	12/27/2013	719,940.00	29,423,947.80	598,104.00	4,979,437.32
P-3250	DH KINGSTONE HOLDING CO LTD	A522	12/27/2013	724,430.00	30,176,131.66	671,895.00	2,188,345.43
P-3271	GRAND OVERSEAS ECONOMIC DEVELOPMENT CO LTD	A521	12/27/2013	756,210.00	33,492,540.90	-	32,840,115.98
P-3292	SUMITOMO METAL MINING CO LTD	A523	12/31/2013	914,973.97	39,654,971.86	-	42,072,913.19
P-3349	SOJITZ CORPORATION	A516	12/19/2013	1,302,842.45	53,807,393.13	1,199,411.22	4,271,709.80
			Subtotal	***$ 5,520,896.42***	***₱ 234,188,272.85***	***$ 3,571,910.22***	***₱ 128,941,504.91***

In support of its motion, petitioner submitted its bank passbook and BIR registered acknowledgment receipts[17] as an alternative supporting documents to prove the inward remittances of these disallowed zero-rates sales.

However, examination of the excerpts from the bank passbooks shows that the same merely indicate the transaction date, withdrawal/deposit amount, balance, and the transaction code. The account owner and account number are not even indicated therein. As such, it cannot be verified if these passbook excerpts actually belong to petitioner.

[16] Decision, p. 23, Docket, Vol. I, p 462.
[17] Exhibits "P-4809 to P-4809.10", Docket, Vol. III, pp. 1017 to 1027.

Assuming that the passbook excerpts pertain to the account of petitioner, nothing therein can be adequately traced to the amount of zero-rated sales disallowed, apart from the handwritten notes therein. However, these handwritten notes cannot be given credence since petitioner did not show that these were entered by the bank itself and are not self-serving for being written by petitioner's personnel.

The corroborating acknowledgment receipts are also of no weight as they are deemed self-serving for being merely internally accomplished by petitioner.

However, the Court reconsiders the disallowed zero-rated sales amounting to ₱2,188,345.43 from customer DH Kingstone Co. Ltd. since petitioner presented the corresponding Client Advice from Security Bank, accounting for the inward remittance of US$52,535.000.[18] Combining the same with the previous Client Advice of US$671,895.00 gives a total of US$724,430.00, which is the total amount per final Invoice No. A522.

Petitioner wishes to point out that in its computation of page 24 of the Decision, this Court included among the disallowed export sales of petitioner the amount of ₱953,523,153.46 on the basis of the said amount being "prescribed 1st Quarter Export Sales".

Petitioner submits that while petitioner's claim for input VAT for the 1st Quarter of CY 2013 may be considered as prescribed; the same principle of prescription cannot also be applied to petitioner's zero-rated sales for lack of legal basis. In other words, the NIRC only provides prescription of input VAT claims but does not contain any provision on prescription of zero-rated sales.

Petitioner's arguments are untenable.

Section 112(A) of the NIRC of 1997, as amended, states that "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". Thus, for purposes of determining when petitioner can be said to be legally entitled to claim a refund of input

[18] Exhibit "P-4809.8", Docket, Vol. III, p. 1025.

taxes incurred or paid, what should matter is not the date when the purchases of goods or services were made and the corresponding input taxes were incurred or paid, but rather, *the date when petitioner's zero-rated sales were made*. For indeed, it is only at the time of such sales that petitioner can establish with definiteness that the input taxes incurred/paid were in fact, either directly attributable or otherwise, allocable to its zero-rated sales.

In the absence of contrary proof, petitioner's input VAT claim for the first quarter of CY 2013 shall be considered attributable to its reported zero-rated sales for the same quarter. Since the two-year prescriptive period for the filing of the administrative claim for input VAT refund under Section 112(A) of the NIRC of 1997, as amended, is reckoned from the close of the taxable quarter when the related zero-rated or effectively zero-rated sales were made, petitioner's declared zero-rated sales for the first quarter of CY 2013 related to the input VAT claim for the same quarter shall be disallowed.

Considering the foregoing, the Court finds that the amount of valid zero-rated sales is increased to ₱2,272,292,208.87, as computed below:

2013 Zero-Rated Sales per VAT Return			
2nd Quarter		₱843,266,947.27	
3rd Quarter		847,904,747.19	
4th Quarter		851,821,394.13	₱ 2,542,993,088.59
Less: Disallowances by the Court			
Sales Disallowed per Decision		₱212,410,245.44	
Less: Reconsiderations granted			
(**a**)	₱83,468,740.53		
(**g**)	2,188,345.43	85,657,085.96	126,753,159.48
Additional Disallowances (**f**)			143,947,720.24
2013 Valid Zero-Rated Sales			**₱2,272,292,208.87**

On disallowed input taxes:

b. The 2nd paragraph in page 28 of the Decision pertains to the ₱169,264.24 input VAT amortization on domestic purchases of capital goods exceeding ₱1 million which was disallowed on the ground that there are no supporting documents/no original supporting documents.

However, the Decision failed to emphasize that the disallowance of said amount was mainly because it pertains to domestic purchases from which petitioner cannot claim any input tax pursuant to the *Coral Bay* ruling as was initially discussed in the Decision.[19]

Hence, petitioner's presentation of supporting documents or original supporting documents to these domestic purchases does not have a bearing in resolving its motion.

c. In the Decision, the Court upheld the ICPA's findings which disallowed input VAT amounting to ₱14,918,802.50 with corresponding amortization for the 2nd to 4th quarters of CY 2013 amounting to ₱1,810,691.78 on the ground that there are no supporting documents for evidence of payment of input VAT as stated in page 15 of the ICPA Report.[20]

Among these disallowed input taxes is an amount of ₱2,488,055.00 supported by BOC IEIRD and Import Entry Declaration (IED) marked as Exhibits "P-3681 to P-3682".

Petitioner, in support of its motion, presented the complete copies of the above IEIRD and IED as Exhibits "P-4808.1 to P-4808.2". A scrutiny of the IEIRD, particularly the lower back portion thereof, shows a machine validation for the payment of ₱2,489,055.00 representing the sum of the import processing fees (IPF) of ₱1,000.00 and input VAT of ₱2,488,055.00. Having now established the payment of the ₱2,488,055.00 input VAT on imported capital goods exceeding ₱1 million, petitioner shall be credited with the related input VAT amortization of ₱124,402.75 for the second to fourth quarters of 2013.

d. In the Decision, the Court disallowed the following input VAT to the extent of the amount insufficiently supported with proof of VAT payment as follows:[21]

Exh. No.	**Import Date**	**Supplier**			**Disallowed 2013 Amortization**
P-3683	7/12/2008	Mitsubishi Corp	Customs and Duties Paid	591,321.00	
			Less: CUD/FIN/Others/IPF	138,812.00	
			Amount attributed to VAT	452,509.00	
			Input VAT claimed	570,107.00	₱ 5,879.90

[19] Decision, pp. 24 to 26; emphasis on the 6th paragraph, Docket, Vol. I, pp. 463 to 465.
[20] Decision, p. 28, Docket, Vol. I, p. 467.
[21] Decision, p. 29, Docket, Vol. I, p. 468.

			Input VAT payment deficiency	117,598.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	3	
P-3729	11/24/2010	Volvo Truck Corp	Customs and Duties Paid	6,673,241.00	
			Less: CUD/FIN/Others/IPF	2,076,466.00	
			Amount attributed to VAT	4,596,775.00	
			Input VAT claimed	8,584,525.00	
			Input VAT payment deficiency	3,987,750.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	598,162.50
P-3740	5/12/2011	Dressta Asia Pacific PTE Ltd	Customs and Duties Paid	1,425,093.00	
			Less: CUD/FIN/Others/IPF	133,784.00	
			Amount attributed to VAT	1,291,309.00	
			Input VAT claimed	1,409,655.00	
			Input VAT payment deficiency	118,346.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	17,751.90
P-3744	5/12/2011	Dressta Asia Pacific PTE Ltd	Customs and Duties Paid	1,530,457.00	
			Less: CUD/FIN/Others/IPF	143,620.00	
			Amount attributed to VAT	1,386,837.00	
			Input VAT claimed	1,513,949.00	
			Input VAT payment deficiency	127,112.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	19,066.80
P-3831	1/7/2013	Sandvik Mining and Construction	Customs and Duties Paid	2,604,912.00	
			Less: CUD/FIN/Others/IPF	753,312.00	
			Amount attributed to VAT	1,851,600.00	
			Input VAT claimed	1,899,430.00	
			Input VAT payment deficiency	47,830.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	7,174.50
			TOTAL		**₱ 648,035.60**

Petitioner presented the complete copies of its IEIRDs, IEDs and related Debit Advices, Statement of Settlement of Duties and Taxes and other documents which were marked as Exhibits "P-4808.3" to "P-4808.8-A", "P-4808.23", "P-4808.24.1" to "P-4808.31-A.2", "P-4808.47" to "P-4808.50". However, only Exhibits "P-4808.3" to "P-4808.8-A", "P-4808.23", "P-4808.26", and "P-4808.47 to P-4808.48" were admitted by the Court.

An examination of Exhibits "P-4808.3" to "P-4808.8-A", particularly the IED marked as Exhibit "P-4808.3.4" shows petitioner's initial VAT payment of ₱117,598.00 which corresponds to the amount previously disallowed by the Court. Hence, petitioner is now entitled to the related input VAT amortization for the 2nd to 4th quarters of CY 2013 in the amount of ₱5,879.90. As to the IEIRDs marked as Exhibits "P-4808.23" and "P-4808.26", and the BOC Single Administrative Document marked as Exhibits "P-4808.47 to P-4808.48", the same does not show any machine validation or proof as to the payment of the VAT indicated therein.

e. As in the case of (c), petitioner likewise seeks for the reconsideration of the input VAT of ₱5,396,826.00 with corresponding amortization for the 2nd to 4th quarters of CY 2013 amounting to ₱269,841.30 which the Court disallowed on the ground that there is no proof of VAT payment.[22]

First, the Court would like to correct the amount of input VAT from said importation which should only be ₱5,393,826.00 based on its supporting IEIRD[23]. Hence, the correct monthly amortization is ₱89,897.10 and the amortization for the 2nd to 4th quarters of CY 2013 is ₱269,691.30.

Second, after re-examination of the evidence presented by petitioner during trial[24] and the evidence presented in support of its motion,[25] the Court reconsiders the input VAT from said importation as sufficient proof of payment has been presented. As such, the disallowance of the ₱269,841.30 input VAT shall be removed.

h. In the Decision, the Court additionally disallowed input taxes amounting to ₱1,101,544.89 on the ground of being overclaimed, which is broken down as follows:[26]

Exh. No.	**Import Date**	**Supplier**			**Disallowed 2013 Amortization**
P-3797	6/13/2012	Marubeni Corp	Input VAT claimed	₱ 9,878,528.00	
			VAT as assessed in IEIRD	3,530,071.81	
			Overclaimed input VAT	6,348,456.19	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	₱ 952,268.43
P-3837	1/7/2013	I&N International Corp	Input VAT claimed	2,065,412.00	
			VAT as assessed in IEIRD	1,070,235.61	
			Overclaimed input VAT	995,176.39	149,276.46

[22] Decision, p. 30, Docket, Vol. I, p. 469.
[23] Exhibit "P-3676".
[24] Exhibits "P-3676 to P-3680-A".
[25] Exhibits "P-4808.9 to P-4808.16", Docket, Vol. III, pp. 959 to 966.
[26] Decision, p. 30, Docket, Vol. I, p. 469.

			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	
			TOTAL		**₱ 1,101,544.89**

Petitioner, in its motion, posits that the ICPA incompletely scanned the whole IEIRD supporting the above importations. Thus, petitioner presented the complete copies of the supporting documents to account for the overclaimed input VAT.[27]

In Exhibit "P-3797", the IEIRD is only composed of one (1) page which only reflects VAT amounting to ₱3,530,071.81 as compared to the input VAT claimed and paid amounting to ₱9,878,528.00, resulting to an overclaimed input VAT of ₱6,348,456.19. This overclaimed input VAT of ₱6,348,456.19 can now be traced to the 2nd page of the IEIRD submitted by petitioner as Exhibit "P-4808.33". With this evidence, the total input VAT claimed in the said importation is now fully supported, hence, the corresponding input VAT amortization for the 2nd to 4th quarters of 2013 amounting to ₱952,268.43 must be removed from the disallowances.

In the same vein, Exhibit "P-3837" is only composed of one (1) page which only reflects VAT amounting to ₱1,070,235.61 as compared to the input VAT claimed and paid amounting to ₱2,065,412.00, resulting to an overclaimed input VAT of ₱995,176.39. However, petitioner submitted anew a copy of the relevant IEIRD as Exhibits "P-4808.36 to P-4808.44" which can account to a total input VAT of ₱2,065,412.00. With this evidence, the total input VAT claimed in the said importation is now fully supported, hence, the corresponding input VAT amortization for the 2nd to 4th quarters of 2013 amounting to ₱149,276.46 must be removed from the disallowances.

Summarizing the above discussions, the Court finds that out of the total declared input VAT amortization amounting to ₱25,646,775.47 from 2nd to 4th quarters of CY 2013, the valid input VAT amortization is thus increased to ₱13,657,564.38. Utilizing said valid input VAT against petitioner's output VAT liabilities for the same period totaling ₱9,739,524.03 brings down the excess/unutilized input VAT in the amount of ₱3,918,040.35, which can be attributed to petitioner's total declared zero-rated sales for the second, third, and fourth quarters of CY 2013. However, only the input VAT in the

[27] Exhibits "P-4808.32 to P-4808.33" and "P-4808.35 to P-4808.44".

increased amount of ₱3,500,966.09 is attributable to the valid zero-rated sales, computed as follows:

Amortization of input VAT on importation of capital goods exceeding ₱1M declared for the 2nd, 3rd and 4th quarters of CY 2013			₱ 25,646,775.47
Less: Disallowances by the Court			
Input VAT amortization disallowed per Decision		₱ 13,490,879.93	
Less: Reconsiderations granted			
(c)	₱ 124,402.75		
(d)	5,879.90		
(e)	269,841.30		
(h)	1,101,544.89	1,501,668.84	11,989,211.09
Valid input VAT amortization on importation of capital goods exceeding ₱1M			**₱13,657,564.38**
Less: Output Tax Due			9,739,524.03
Excess input VAT amortization available for refund			**₱ 3,918,040.35**
Multiply by ratio of valid zero-rated sales over total sales:			
Valid zero-rated sales (2nd to 4th quarters)		₱2,272,292,208.87	
Divide by total zero-rated sales per VAT returns (2nd to 4th quarters)		2,542,993,088.59	89.355029%
2013 Input VAT allowed for refund			**₱ 3,500,966.09**

The Court finds no merit as to petitioner's contention that the *Coral Bay* case finds no application to petitioner. It must be stressed that the principle in *Coral Bay case* may, by analogy, be applied insofar as petitioner cannot seek a refund from the BIR of its unutilized input taxes since petitioner's local purchases of goods and services are subject to VAT at zero percent rate, being a BOI-registered entity. Being a BOI-registered entity, no output shall be shifted to or passed on to it, and conversely, no input VAT shall be paid by it from said purchases. In this instance, where petitioner paid the input VAT, notwithstanding that under the law it is VAT zero-rated, the said input VAT cannot be offset against its output VAT. Therefore, petitioner's recourse is to seek reimbursement from the supplier who shifted to it the output VAT.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 30 January 2018)** is **DENIED**; while petitioner's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Court's Decision dated January 30, 2018 is amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **P3,500,966.09** representing its unutilized excess input VAT for the second to fourth quarters of calendar year 2013 attributable to its zero-rated sales for the same period.

SO ORDERED."

SO ORDERED.

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

WE CONCUR:

Catherine T. Manahan
With due respect, please see my Concurring and Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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

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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

RIO TUBA NICKEL MINING CORPORATION, *Petitioner,*	**CTA Case No. 9127** Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson,* **MANAHAN,** and **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 0 8 2019 2:30 p.m.

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.*:

While I concur with the findings in the Amended Decision which resulted to the increase of the amount granted for refund from Php2,077,757.45 to Php3,500,966.09, I have to register my dissent to the application of *Coral Bay Nickel Corp. v. Commissioner of Internal Revenue*,[1] specifically that the recourse of the taxpayer is not against the government but against the seller/supplier who shifted to it the output VAT.

I cannot subscribe to the view that because petitioner should not have paid the input VAT because its sales are zero-rated, it is not therefore entitled to its refund from its domestic purchases of goods and services. Even if (in theory and under the law) petitioner should not incur input taxes, there may still be a valid claim for refund of erroneously paid input taxes if petitioner was able to prove that its domestic suppliers indeed passed on VAT to it, instead of subject such sales (purchases by petitioner) to zero-rate. This claim must still comply with the evidentiary requirements for proving a claim for refund. However, if VAT was passed on as part of the purchase price, with no indication of the VAT as a separate item in the invoice or official receipt, then the same cannot be refunded.

[1] G.R. 190506, June 13, 2016.

The quasi-contract of *solutio indebiti* also applies to claims for refund of taxes. The underlying principle of *solutio indebiti* is precisely to correct or rectify a situation where the payor has no obligation to pay but for some reason, nevertheless paid an amount, hence, the obligation to return what was paid arises.

I wish to reiterate the position I have previously taken in *Hinatuan Mining Corp. v. Commissioner of Internal Revenue*[2] and *CBK Power Company Limited v. Commissioner of Internal Revenue*[3] with respect to the recourse available to petitioner in recovering its input VAT. Thus:

> xxx [T]here is a need to de-clutter the evidentiary standards for claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales and resolve it on the basis of whether or not the taxpayer complied with the following well-settled requisites:
>
> 1. That the taxpayer is VAT-registered;
> 2. That the claim for refund was filed within the prescriptive period;
> 3. That there must be zero-rated or effectively zero-rated sales;
> 4. That input taxes were incurred or paid;
> 5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
> 6. That the input taxes were not applied against any output VAT liability.
>
> Additionally, if records would show that output and input taxes were paid by the local supplier/s and petitioner, respectively, I humbly believe that recourse against the government by way of a claim for refund, is more legally sound than directing the claimant to seek redress from its suppliers. xxx Although, statutorily, the supplier is the taxpayer of the output VAT, there is no compelling reason on its part to claim for the refund because the burden of the tax, i.e., input tax, was assumed by the buyer.

Thus, in the instant case, I concur with the various findings of the decision, however, I vote to allow petitioner's purchases from domestic suppliers amounting to Php802,919.68 and to subject the same to verification for the

[2] CTA Case No. 9092, November 3, 2017.
[3] CTA EB No. 1685, February 20, 2019.

purpose of determining the substantiated amount, and the resulting refundable amount.

CATHERINE T. MANAHAN
Associate Justice