REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TAGANITO MINING CORPORATION,
Respondent.

CTA EB NO. 1404
(CTA Case No. 8822)

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TAGANITO MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1511
(CTA CASE NO. 8822)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:

JUN 11 2018 11:36 a.m.

x---x

DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* are Petitions for Review,[1] and Supplemental Petition for Review[2] seeking nullification of the Decision dated September 14, 2015, Amended Decision[3] dated May 20, 2016 (Assailed Decision) and Resolution[4] dated August 12, 2016 (Assailed Resolution), all promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8822 entitled "*Taganito Mining Corporation vs. Commissioner of Internal Revenue*" which partially granted Taganito Mining Corporation's (Taganito) claim for refund or issuance of a tax credit certificate in the amount of P14,263,324.04, representing petitioner's unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million incurred during taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013.

The dispositive portions of the assailed Decision, Amended Decision and Resolution are as follows:

Decision:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of P10,343,265.07 representing its unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million incurred during taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013.
>
> **SO ORDERED.**"

Amended Decision:

> "**WHEREFORE**, premises considered, petitioner's Motion for Partial Reconsideration is **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the assailed Decision dated September 14, 2015 is amended to read as follows:
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> > "**WHEREFORE**, premises considered, the instant Petition for Review s hereby **PARTIALLY GRANTED**.

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[1] Rollo, CTA EB No. 1404, pp.7-30, with annexes; CTA EB. No. 1511, pp. 1-26, with annexes.
[2] Ibid. pp. 90-103, with annexes.
[3] Rollo, pp. 66-86., CTA EB No. 1128.
[4] Rollo, pp. 87-91, CTA EB No. 1128.

Respondent is hereby **ORDRED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **FOURTEEN MILLION TWO HUNDRED SIXTY THREE THOUSAND THREE HUNDRED TWENTY FOUR PESOS AND 4/100 (14,263,324.04)** representing its unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million incurred during taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013.

SO ORDERED."

Resolution:

"**WHEREFORE**, finding no reversible error in the assailed Amended Decision dated May 20, 2016 to warrant reconsideration thereof, CIR's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 20 May 2016)** filed on May 30, 2016 as well as Taganito's **Motion for Partial Reconsideration of the May 20, 2016 Amended Decision** filed via registered mail on June 8, 2016, are **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The facts as culled from the Decision dated September 14, 2015, and the records, are as follows:

"Petitioner Taganito Mining Corporation[5] (hereinafter referred to as "Taganito", for brevity) is a corporation duly organized and existing under and by virtue of the laws of the Philippines with current business address located at 29th Floor NAC Tower, 32nd Street, Bonifacio Global City, Taguig City.

Respondent[6] is the duly-appointed Commissioner of the Bureau of Internal Revenue (CIR), vested with authority to exercise the functions of the said office including, *inter alia,* the power to decide refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997, as

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[5] Respondent in CTA EB No. 1511 and petitioner in CTA EB No. 1404.
[6] Petitioner in CTA EB No. 1511 and respondent in CTA EB No. 1404.

amended (1997 NIRC) and other laws administered by the Bureau of Internal Revenue, and holding office administered by the Bureau of Internal Revenue, and holding office at the BIR National Office Building, Diliman, Quezon City.

Petitioner is duly registered with the Securities and Exchange Commission (SEC) with Certificate of Registration No. 138682 issued on March 4, 1987. Petitioner is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores.

Petitioner is a VAT-registered entity with updated Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000046046. It is also registered with the Board of Investments (BOI) with BOI Certificate of Registration No. EP 88-306 dated April 14, 1988.

On December 27, 2013, petitioner filed its claim for refund of excess input VAT paid on its domestic purchases and importation of taxable goods and services and importation of goods including capital goods in accordance with Section 112 (A) and (B) in relation to Section 106 (A)(2)(a)(1) of the National Internal Revenue Code of 1997, as amended (1997 NIRC) in the amount of P44,107,520.34 for purchases made during the year 2012 and for re-filed claims for refund of the amortized portion of input VAT on its capital goods purchased during the years 2008, 2010, 2011.

Due to respondent's inaction on petitioner's administrative claim, petitioner filed the instant Petition for Review on May 23, 2014."

In the Petition for Review before the Court in Division, Taganito prays for the refund of the amount of P22,011,331.91 allegedly representing excess/unutilized input VAT paid on domestic purchases and importation of capital goods with aggregate acquisition cost exceeding P1 million, which were amortized and attributable to zero-rated sales in the years 2012 to 2013, broken down as follows:

2012 input taxes on purchases of goods and services and capital goods with aggregate acquisition cost exceeding 1M pesos amortized in 2012 and 2013.	P16,746,110.31
2011 input taxes on purchases of capital goods amortized in 2013	4,339,548.88
2010 input taxes on purchases of capital goods amortized in 2013	925,672.72
Amount of claim per Petition for Review	**P22,011,331.91**

In the Answer dated June 13, 2014,[7] the CIR raised the following as his Special and Affirmative Defenses: that Taganito's alleged claim for refund is subject to administrative routinary investigation or examination by the Bureau; the amount of P22,011,331.91 allegedly representing petitioner's excess/unutilized VAT input taxes was not properly documented; that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund; that there is no record that Taganito submitted the complete documents for refund.

In the Joint Stipulation of Facts and Issues,[8] the parties agreed that the issues to be resolved by the Court in Division is whether or not Taganito is entitled to refund of its alleged excess VAT input taxes of Twenty Two Million Eleven Thousand Three Hundred Thirty One and 91/100 pesos (Php22,011,331.91).

After trial on the merits, and upon the parties' submission of their respective memoranda, the case was submitted for decision on March 26, 2015.[9]

On September 14, 2015,[10] the Court in Division rendered the questioned Decision.

On September 28, 2015,[11] the CIR filed a "Motion for Partial Reconsideration (re: Decision promulgated 14 September 2015)."

On September 30, 2015,[12] Taganito filed a "Motion for Partial Reconsideration and/or New Trial."

On October 21, 2015,[13] the CIR filed his Comment/Opposition (Re: Motion for Partial Reconsideration and/or New Trial)."

On October 19, 2015, Taganito filed a "Comment to Respondent's Motion for Partial Reconsideration."

On December 4, 2015, the Court in Division issued a Resolution which denied CIR's Motion for Partial Reconsideration for lack of merit and set the case for hearing for the presentation of the documents mentioned and attached to Taganito's Motion for Partial Reconsideration or New Trial.

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7 Docket, CTA Case No. 8822, pp. 41-49.
8 Docket, CTA Case No. 8822, pp. 89-92.
9 Ibid. p. 280.
10 Ibid. pp. 316-346.
11 Ibid. pp. 348-354.
12 Ibid. pp. 355-362, with Annexes.
13 Ibid. pp. 401-412.

Aggrieved, the CIR filed before the Court *En Banc* on December 28, 2015 a Petition for Review.[14]

On February 2, 2016, the Court *En Banc* issued a Resolution[15] ordering Taganito to file its Comment on the CIR's Petition for Review.

On March 1, 2016, Taganito filed its Comment on the CIR's Petition for Review but submitted only five (5) copies of the said Comment. Hence, this Court issued Minute Resolution[16] ordering Taganito to file five (5) copies of the Comment, within ten (10) days from notice, to which Taganito complied on March 14, 2016.[17]

Meanwhile, on February 24, 2016, the hearing before the Court in Division proceeded with the presentation of recalled petitioner's witness, Ms. Lennie A. Terre, whose testimony was deemed completed and terminated. Thereafter, Taganito filed before the Court in Division a "Supplemental Formal Offer of Evidence."[18] On April 4, 2016, the Court in Division issued a Resolution on Taganito's "Supplemental Formal Offer of Evidence."

On the other hand, in the Resolution[19] of the Court *En Banc* dated April 18, 2016, the Court suspended the filing of the parties' respective memoranda.

On May 20, 2016, the Court in Division rendered the assailed Amended Decision.[20]

On May 30, 2016, the CIR filed his "Motion for Partial Reconsideration (re: Amended Decision promulgated 20 May 2016)."[21]

On June 8, 2016, Taganito filed a "Motion for Partial Reconsideration of the May 20, 2016 Amended Decision."[22]

On July 1, 2016, the CIR filed his Comment[23] on Taganito's Motion for Partial Reconsideration.

On July 17, 2016, Taganito filed its Comment[24] on the CIR's Motion for Partial Reconsideration.

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[14] Rollo, CTA EB No. 1404, pp. 1-26, with Annexes.
[15] Ibid. pp. 71-72.
[16] Ibid. p. 79.
[17] Ibid. pp. 82-83.
[18] Docket, CTA Case No. 8822, pp. 472-477, with Annexes.
[19] Rollo. CTA EB No. 1404, pp. 88-89.
[20] Docket, CTA NO. 8822. Pp. 531-541.
[21] Ibid. pp. 542-565.
[22] Ibid. pp. 568-578.
[23] Ibid. pp. 585-592.
[24] Ibid. pp. 593-595.

On August 1, 2016, the CIR filed his Reply.[25]

On August 12, 2016, the Court in Division issued the assailed Resolution[26]

Meanwhile, on September 7, 2016, Taganito filed before the Court *En Banc* a "Motion for Extension of Time (to file Petition for Review) and to Consolidate."[27]

On September 13, 2016, the Court *En Banc* issued a Minute Resolution[28] granting Taganito's motion for extension of time. On even date, the CIR filed a "Supplemental Petition for Review"[29] in CTA EB No. 1404.

On September 22, 2016, the Court *En Banc* issued a Resolution[30] ordering Taganito to file its Comment on the CIR's "Supplemental Petition for Review."

On September 26, 2016, Taganito filed its Petition for Review (with Motion to Consolidate).[31] However, Taganito filed insufficient copies, hence, the Court *En Banc* ordered Taganito to file additional one (1) copy of the Petition for Review within ten (10) days from notice. On November 7, 2016, Taganito filed its Compliance,[32] submitting the additional copy of the Petition for Review. On November 9, 2016, the Court *En Banc* issued a Minute Resolution[33] noting Taganito's "Compliance."

October 19, 2016, Taganito filed a "Manifestation and Motion on Supplemental Petition for Review."[34]

On December 6, 2016, the Court *En Banc* issued a Resolution[35] granting the consolidation of CTA EB No. 1404 with CTA EB No. 1511.

On January 3, 2017, the CIR filed a Comment[36] on Taganito's Petition for Review.

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[25] Ibid. pp. 597-605.
[26] Ibid. pp. 607-618.
[27] Rollo, CTA EB No. 1511, pp. 1-4.
[28] Ibid. p. 5.
[29] Ibid. pp. 90-105, with Annexes.
[30] Ibid. pp. 133-134.
[31] Ibid. pp. 7- 27, with Annexes.
[32] Ibid. p. 161.
[33] Ibid. p. 162.
[34] Ibid. pp. 135-137.
[35] Ibid. pp. 139-141.
[36] Ibid. pp. 142-149.

On January 27, 2017, Taganito filed a "Motion for Time To File Comment/Opposition."[37]

On February 10, 2017, the Court *En Banc* issued a Minute Resolution[38] granting the extension of time sought by Taganito.

On February 13, 2017, Taganito filed its "Comment/Opposition to Supplemental Petition for Review (By Commissioner of Internal Revenue)".[39]

In the Resolution dated March 28, 2017,[40] the Court *En Banc* gave due course to the Petitions for Review and required the parties to submit their respective memoranda.

Taganito filed its "Consolidated Memorandum" on May 5, 2017,[41] while the CIR failed to file his memorandum as per Records Verification Report of the Judicial Records Division of this Court dated May 24, 2017.[42]

On June 15, 2017, the Court *En Banc* issued a Resolution[43] submitting the cases for decision.

ISSUE

The principal issue in these consolidated cases is whether or not the Second Division of this Court erred in holding Taganito entitled to refund or issuance of tax credit certificate in the reduced amount of Fourteen Million Two Hundred Sixty Three Thousand Three Hundred Twenty Four pesos and 4/100 (P14,263,324.04).

CONSOLIDATED ARGUMENTS OF THE PARTIES

The CIR contends that Taganito failed to substantiate its claim for refund; that Taganito failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 136 of the NIRC of 1997; Taganito was not able to prove that it has strictly complied with the submission of all supporting and relevant documents provided under Revenue Memorandum Order No. 53-98; that Taganito failed to prove that no other claim for refund has been filed with the Board of Investment, Department of Finance, Special Economic Zones since no certifications from said agencies were presented by Taganito during the administrative stage nor before the

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[37] Ibid. pp. 150-152.
[38] Ibid. p. 154.
[39] Ibid. pp. 155-158.
[40] Ibid. pp. 161-162.
[41] Ibid. pp. 163-179.
[42] Ibid. p. 180.
[43] Ibid. pp. 182-183.

Court during the presentation of its evidence; and that the Second Division of this Court erred in granting the motion for new trial for the presentation of additional evidence because the documents sought to be presented are neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable negligence which merit a reopening of the case.

On the other hand, Taganito argues that there were errors in the computation which resulted to double deduction of its output tax; that the substantiated amount stated in the ICPA's findings has already been reduced by the amount of Petitioner's output taxes; that there is erroneous deduction of substantiated export sales; that actual receipt of the purchase price or full-payment for the export sale is not a requirement to classify a transaction as zero-rated; that its export sales are fully substantiated; that the zero-rated sales covered by Invoice No. 430 in the amount of $140,250 or the converted peso amount of Ph5,082,363.75 should be allowed; that its zero-rated sales per VAT returns include all types of sales, including other zero-rated sales; and that it claims that it has properly established through sufficient evidence that its purchases of capital goods from which the input taxes being claimed for refund arose, are only those which are attributable to its zero rated sales from the sale of ores from mining activities.

RULING OF THE COURT EN BANC

The Petition for Review before the Court in Division was anchored on Taganito's claim for refund pursuant to Sections 106 (A)(2)(a)(1), 110 and 112 (A) and (C) of the NIRC of 1997, as amended.

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.* –
>
> (A) *Rate and Base of Tax.* –
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* – The term 'export sales' means:
>
> (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);"

"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:

xxx xxx xxx

(B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters."

Section 112 of the NIRC of 1997, as amended provides:

"Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106 (A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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.

> (B) xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application, within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."** *(Emphasis supplied)*

Pursuant to the above-quoted provision and as laid down by the Supreme Court in a number of cases[44], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund or tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

1. That the taxpayer must be VAT-registered;
2. That the claim for refund was filed within the two-year 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 VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales; and
6. That the input VAT payments were not applied against any output VAT liability.

The first and second requisites are not assigned as issues in these petitions. Such requisites were already settled in the Decision of the Court in Division that Taganito is a VAT registered entity and that the instant claim for refund was timely filed by it.

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[44] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 and 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

Thus, the Court *En Banc* shall proceed with the determination of the parties' claims.

CTA EB NO. 1404

The Court *En Banc* observed that the CIR's Petition for Review and Supplemental Petition for Review are contrary to Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals because the same failed to discuss the issues passed upon by the Court in Division in the assailed Amended Decision and Resolution nor failed to specify which of the findings of the Court in Division are contrary to law or not supported by evidence.

Considering that the arguments of the CIR are mere sweeping statements, thus, there is no need to delve further in to the CIR's reasons for they have been sufficiently passed upon by the Court in Division in the assailed Decision, Amended Decision and Resolution.

CTA EB NO. 1511

Taganito claims that there was double deduction for output taxes and that it is entitled to refund on the total amount of its adjusted substantiated input taxes without any pro-rating due to attribution to other zero-rated sales that involve the sale of nickel ores.

After evaluation of the records, this Court finds no error was committed by the Court in Division with regards to these claims.

As correctly found by the Court in Division in the assailed Decision:[45]

> "Records show that petitioner is a VAT-registered entity primarily engaged in the business of mining and exporting nickel saprolite and limonite ore and exploration activities. As per BOI Certifications dated January 14, 2013 and January 22, 2014, petitioner was reported to have exported 100% of its total sales for the period of January 1, 2012 to November 20, 2012 and January 1, 2013 to December 31, 2013, respectively. For the taxable years 2012 and 2013, petitioner declared in its Quarterly VAT Returns zero-rated sales amounting to P3,093,865,540.54 and P3,273,782,021.06, respectively, *xxx*.
>
> Examination of petitioner's Summary of Zero-rated Sales for the year 2012 and the corresponding supporting documents revealed that out of the total declared zero-rated sales of

[45] Citations omitted.

P3,093,865,540.54, the amount of P186,044,021.18 should be disallowed for not being properly substantiated with export documents such as bank client advices for the foreign currency proceeds, *xxx*.

For taxable year 2013, petitioner's declared zero-rated sales per its Quarterly VAT returns amounted to P3,272,782,021.0565. However, upon scrutiny of petitioner's Summary of Zero-Rated Sales for the year 2013 and the corresponding supporting documents showed a total zero-rated sales in the amount of P3,109,100,863.35 only. Thus, the difference of P164,681,157.71 (P3,273,782,021.06 less P3,109,100,863.35) should be disallowed for being unsupported. Further examination of the supporting documents also revealed that the following sales in the total amount of P462,266,844.52 should likewise be disallowed for not being properly supported by bills of lading and bank client advices for the foreign currency proceeds and PEZA Certifications of customers *xxx*

In sum, petitioner's substantiated zero-rated sales for the taxable years 2012 and 2013 are P2,907,821,519.36 and P2,646,834,018.83, respectively, *xxx*.

Inasmuch as only a portion of the declared zero-rated sales were properly substantiated, only a portion of substantiated input tax attributable thereto shall be granted based on the following rates:

	2012	2013
Properly substantiated zero-rated sales	P2,907,821,519.36	P2,646,834,018.83
Divided by: Total zero-rated sales per VAT Returns	3,093,865,540.54	3,273,782,021.06
RATE	**93.9867%**	**80.8494%**

xxx *xxx* *xxx*

Petitioner's total input tax from purchase of capital goods with aggregate acquisition cost exceeding 1 million pesos based on its Quarterly VAT returns filed for the taxable years 2010, 2011, and 2012 amounted to P4,628,363.58, P17,691,452.70 and P39,057,841.58, respectively, or an aggregate total of P61,377,657.86, xxx

xxx *xxx* *xxx*

Upon verification of petitioner's Summary of Unapplied Input VAT Subject for Refund from Importation of Goods and Local Purchases of Capital Goods with Aggregate Value of at Least P1M (Exclusive of VAT) Purchased in 2012, 2011 and 2012, and Amortized in 2012 and 2013, as well as the related supplier's invoices and Bureau of Customs Import Entries and Internal Revenue Declarations (IEIRDs), the Court-commissioned Independent CPA found that petitioner's valid claim for refund amounts to P21,951,278.29.

However, further examination by the Court reveals that the following input taxes from domestic purchases and importations of capital goods for the taxable years 2012, 2011 and 2012 in the aggregate amount of P9,335,682.00 should be disallowed for failure to comply with the invoicing requirements prescribed by law, to wit:

IMPORTATIONS				
Year	**Exhibit**	**IEIRD No.**	**IEIRD/Payment Date**	**Input Tax**
a. Bank debit advice amount does not correspond to the amount indicated in the IEIRDs and/ or Assessment Form				
2010	P-1327 to P-1329	107658476	6/3/2010	P4,098,60.00
2011	P-1337 to P-1343	114789647	6/29/2011	3,084,516.00
Subtotal				**P7,182,576.00**
b. No bank debit advice				
2012	P-1350 to P-1353	119387633		P655,356.00
Subtotal				**P655,356.00**
TOTAL DISALLOWED INPUT TAX FROM IMPORTATIONS				**P7,837,932.00**
DOMESTIC PURCHASES				
Year	**Exhibit**	**IEIRD No.**	**IEIRD/Payment Date**	**Input Tax**
a. Supported by undated invoice				
2010	P-1358	C1013008		P146,678.57
	P-1374	A111974		170,464.20
	P-1375	A111975		170,464.29
	P-1377	C1013008		146,678.57
	P-1378-A	A112921		146,678.57
	P-1378-B	A112922		146,678.57
2012	P-1370	96032		112,500.00
Subtotal				**P1,040,142.86**
b. Supported by invoice without the TIN of the purchaser				
2011	P-1366	4007	6/9/2011	P111,321.43
	P-1378	C1013126	10/26/2011	183,107.14
Subtotal				**P294,428.57**
c. Supported by invoice with different TIN of the purchaser				
2011	P-1359	C1009837	7/9/2011	P145,000.00
Subtotal				**P145,000.00**
d. Supported by service and spare parts invoice showing purchase of supplies				
2011	P-1386	7255		P17,678.57
Subtotal				**P17,678.57**
TOTAL DISALLOWED INPUT TAX FROM DOMESTIC PURCHASES				**P1,497,750.00**

TOTAL DISALLOWANCES	**P9,335,682.00**

> The subject input taxes violate the substantiation requirements under Section 113(A) and (B) of the 1998 NIRC, *xxx*
>
> *xxx* *xxx* *xxx*
>
> Hence, out of the total P61,377,657.86 input taxes declared by petitioner in its Quarterly VAT Returns for the taxable years 2010, 2011 and 2012, only the amount of P51,741,707.76 is duly substantiated for VAT purposes, xxx
>
> *xxx* *xxx* *xxx*
>
> Not all of the foregoing substantiated input VAT may be refundable. In accordance with Section 110(A)(2) of the 1997 NIRC, petitioner can only claim the amortized portion of its properly substantiated input tax, *xxx*
>
> *xxx* *xxx* *xxx*
>
> As to whether or not the said input taxes were applied against any output tax and/or carried over to the succeeding taxable quarter(s), petitioner's quarterly VAT return for the fourth quarter of 2013 showed a deduction for VAT refund/TCC claimed" in the amount of P23,473,479.38 which include the total claim of P21,011,331.91 (and the substantiated input taxes of P19,733,837.61). Thus, petitioner could not have utilized the subject claim in the succeeding taxable period.
>
> Applying the rate of substantiated zero-rated sales previously computed and petitioner's output taxes for taxable years 2012 and 2013, petitioner's valid input taxes on the importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million which are available for refund amounts to P10,343,265.07, *xxx*.

The pertinent portions of the Amended Decision which modified the amount to be refunded to Taganito are quoted as follows:

> By submitting additional documents, petitioner was able to prove that out of the total disallowed input taxes of P9,335,682.00, the following in the amount of P7,837,932.00 are already properly substantiated:

Year	Exhibit	IEIRD No.	IEIRD/Payment Date	Input Tax
2010	P-1327 to P-1329, P-1920-16	107658476	6/3/2010	₱ 4,098,060.00
2011	P-1337 to P-1343, P-1920-17, P-1920-18	114789647	6/29/2011	3,084,516.00
2012	P-1350 to P-1353, P-1920-19	119387633	2/10/2012	655,356.00
TOTAL INPUT TAXES FROM IMPORATIONS				**P7,837,932.00**

Petitioner disagrees with the Court's disallowance of input taxes form domestic purchases of capital goods in the aggregate amount of P1,497,750.00 averring that the same was not put at issue since these were reserved for utilization. However, the Court found that the claimed input taxes for refund amounting to P22,011,331.91 includes input taxes from domestic purchases of capital goods as reported by the Court-commissioned Independent CPA. The subject disallowance, broken down as follows, should be maintained:

DOMESTIC PURCHASES				
Year	**Exhibit**	**IEIRD No.**	**IEIRD/Payment Date**	**Input Tax**
Supported by undated invoice				
2010	P-1358	C1013008		P146,678.57
	P-1374	A111974		170,464.20
	P-1375	A111975		170,464.29
	P-1377	C1013008		146,678.57
	P-1378-A	A112921		146,678.57
	P-1378-B	A112922		146,678.57
2012	P-1370	96032		112,500.00
Subtotal				***P1,040,142.86***
Supported by invoice without the TIN of the purchaser				
2011	P-1366	4007	6/9/2011	P111,321.43
	P-1378	C1013126	10/26/2011	183,107.14
Subtotal				***P294,428.57***
Supported by invoice with different TIN of the purchaser				
2011	P-1359	C1009837	7/9/2011	P145,000.00
Subtotal				***P145,000.00***
Supported by service and spare parts invoice showing purchase of supplies				
2011	P-1386	7255	6/9/2011	P17,678.57
Subtotal				*P17,678.57*
TOTAL DISALLOWED INPUT TAX FROM DOMESTIC PURCHASES				**P1,497,750.00**

In fine, out of the total P61,377,657.86 input taxes declared by petitioner in its Quarterly VAT Returns for the taxable years 2010, 2011 and 2012, only the amount of P59,579,639.90 is duly substantiated for VAT purposes, *xxx*

xxx *xxx* *xxx*

Consequently, petitioner can only claim the amortized portion of its adjusted properly substantiated input taxes for the taxable years 2012 and 2013 in the total amount of P21,638,603.22, *xxx*

xxx *xxx* *xxx*

Applying the rate of substantiated zero-rated sales previously computed and petitioner's output taxes due for the taxable years 2012 and 2013, petitioner's adjusted valid input taxes on importation and domestic purchases of capital goods with cost exceeding P1 Million which are available for refund amounted to P14,263,324.04, as shown below:

	2012	2013	**TOTAL**
Substantiated amortized input taxes	P 6,981,446.28	P14,657,156.94	**P21,638,603.22**
Multiplies by the rate of substantiated zero-rated ales	98.15%	94.97%	
Valid input taxes attributable to zero-rated sales	P6,852,289.52	P13,919,901.95	**P20,722,191.27**
Less: Output tax	1,509,020.00	4,000,846.88	**6,508,867.43**
Refundable input taxes	**P5,343,268.97**	**P8,920,055.07**	**P14,263,324.04**

As regards Taganto's claim of double deduction, the Court *En Banc* finds the said argument unmeritorious. The Court in Division correctly deducted the output VAT for taxable years 2012 and 2013 in order to arrive at the total refundable input VAT. Contrary to the Taganito's claim, the amounts lifted by the Court in Division from the ICPA Report pertain to the computation of substantiated input VAT invoices from its purchases.[46] Nowhere in the said computation did the ICPA subtract any output VAT.

Anent the disallowances covered by Invoice No. 430, this Court finds that no sufficient evidence was presented to prove that Taganito is entitled to the allowable deductions. Taganito failed to prove that the sales covered by the said invoices have been paid for in acceptable foreign currency and that the payment has been accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) provided by law.

Taganito's claim that the Court in Division erred in ruling that the zero-rated sales covered by Invoice Nos. 499, 500 and 501 should be disallowed is without merit. Taganito failed to substantiate its entitlement to its claim since it did not submit bank credit advices for the foreign currency proceeds and the original debit memo so that the Court can fully appreciate the other evidence presented before the Court.

Taganito maintains that it has properly established through sufficient evidence that its purchases of capital goods from where the input taxes being

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[46] ICPA Report, Table III, Docket, CTA Case No. 8822, p. 218.

claimed for refund arose, are only those which are attributable to its zero-rated sales from the sale of ores from mining activities.

The Court *En Banc* disagrees with Taganito. As correctly ruled by the Court in Division, in the assailed Resolution:

> "As explained well in the assailed Amended Decision, the Court recognized that Taganito had other zero-rated sales for the years 2012 and 2013 other than from mining activities, albeit Taganito failed to likewise substantiate the same.
>
> Taganito wants the Court to attribute all of its substantiated input taxes to its substantiated zero-rated sales of nickel ores only, without considering its unsubstantiated zero-rated sales from activities other than mining. The Court simply cannot overlook the fact that Taganito failed to substantiate and prove the nature of its zero-rated sales that are not from mining activities. Hence, whether the capital goods from where the claimed input taxes arose were not used it the generation of such sales cannot be ascertained. The following testimony of Taganito's Vice-President for finance Lennie A. Terre, does not suffice:
>
>> "Q: You mentioned a while ago that the input taxes of Taganito Mining Corporation came from domestic purchases of goods and services, can you tell us if there is any relationship between these purchases and petitioner's business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores?
>>
>> A: On importation and local purchases of capital goods, the capital goods consist of capital equipment and other capital goods used by the company in exploring and producing the mined ores which are the mineral products being exported by the company.
>>
>> The same is true for our domestic purchases of goods and services because these goods are purchased and the services secured for the purchase of being used for our mining operations and without which we cannot produce the mineral ores. Therefore, the input VAT that we pay on our capital goods and other purchases of goods and services are all essential and attributable to our company's export activities, more particularly because this is the sole business purpose and activity of our company."

> The foregoing and Schedules IX and X of the Independent CPA report only prove that the capital goods were used in generating zero-rated sales of nickel ores. However, they do not prove that the same assets were not used in generating Taganito's other zero-rated sales so that the input taxes arising therefrom can be directly attributed to the zero-rated sales of nickel ores.

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[47]

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[48] In this case, Taganito was able to prove that it is entitled to a refund or issuance of a tax credit certificate for its unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million incurred during taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013 but in the reduced amount of P14,263,324.04.

In view of the foregoing discussions, the Court *En Banc* finds no cogent reason to reverse the assailed Amended Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review dated December 22, 2015, Supplemental Petition for Review dated September 5, 2016 both filed by the Commissioner of Internal Revenue and the Petition for Review dated September 23, 2016 filed by Taganito Mining Corporation are **DENIED for lack of merit.** Accordingly, the Amended Decision dated May 20, 2016 and Resolution dated August 12, 2016 are hereby **AFFIRMED.**

SO ORDERED.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[47] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

[48] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice