Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 15, 2020**, *which reads as follows:*

"G.R. No. 222904 ***(Philippine Gold Processing and Refining Corporation v. Commissioner of Internal Revenue).*** – This is an appeal by *certiorari* challenging the Decision[1] and Resolution[2] promulgated on January 4, 2016 and February 19, 2016, respectively, by the Court of Tax Appeals *(CTA) En Banc* in CTA EB Case No. 1192 which affirmed the February 27, 2014 Decision[3] and the May 29, 2014 Resolution[4] of the CTA Second Division in CTA Case No. 8301 denying petitioner's claim for refund.

Antecedents

Philippine Gold Processing and Refining Corporation *(petitioner)* is a domestic corporation engaged in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources for export. It is also registered with the Board of Investments *(BOI)* as "New Producer of Gold and Silver Dore'," [5] on a non-pioneer status, under Certificate of Registration No. 2008-042 issued on February 7, 2008.[6]

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[1] *Rollo,* pp. 30-51; penned by Associate Justice Cielito N. Mindaro-Grulla with the concurrence of Presiding Justice Roman G. Del Rosario, Associate Justice Lovell R. Bautista (retired), Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova (retired), Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Amelia R. Cotangco-Manalastas (retired) and Associate Justice Ma. Belen M. Ringpis-Liban. Associate Justice Juanito C. Castañeda, Jr., was on leave.

[2] Id. at 52-54; penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Presiding Justice Roman G. Del Rosario, Associate Justice Juanito C. Castañeda, Jr. (retired), Associate Justice Lovell R. Bautista (retired), Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Amelia R. Cotangco-Manalastas (retired) and Associate Justice Ma. Belen. M. Ringpis-Liban. Associate Justice Erlinda P. Uy, was on leave.

[3] Id. at 75-96; penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justice Caesar A. Casanova (retired) and Associate Justice Amelia R. Contangco-Manalastas (retired).

[4] Id. at 98-100; penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justice Caesar A. Casanova (retired) and Associate Justice Amelia R. Contangco-Manalastas (retired).

[5] Also indicated as "Silver Dore or Silver-Dore'" in some parts of the *rollo,* specifically on pp. 41, 47 and 75-76.

[6] Id. at 31.

Petitioner filed with the Bureau of Internal Revenue *(BIR)* its Quarterly Value Added Tax *(VAT)* Return for the third quarter of the fiscal year ending June 30, 2009, showing creditable input VAT paid on purchases of goods and services and various importation of goods for the said quarter in the amount of ₱107,502,796.09.[7]

On August 3, 2009, the BIR, through Acting Commissioner James H. Roldan, confirmed that the input taxes paid by petitioner may be claimed as tax credit or refund. Subsequently, in a letter dated January 27, 2010, the BOI granted petitioner's application to be certified with 100% export sales of its products.[8]

On February 9, 2011, petitioner filed a Claim for Refund or Issuance of Tax Credit Certificate with the BIR Revenue District Office *(RDO)* No. 70 in Aroroy, Masbate for input taxes it paid for various purchases of goods and services and importations during the period January 1, 2009 to March 31, 2009 in the amount of ₱107,502,796.09.[9]

Since the Commissioner of Internal Revenue *(respondent)* did not act on its claim, petitioner filed on June 28, 2011 a Petition for Review before the CTA.

In her Answer, respondent contended that the petition was prematurely filed because the 120-day period to appeal the ruling or inaction by the Commissioner of Internal Revenue *(CIR)* on the Claim for Refund or Tax Credit under Section 112(C)[10] of the National Internal Revenue Code of 1997 *(1997 NIRC)*, as amended, has not begun to run considering that petitioner failed to submit complete documents in support of the application. Thus, petitioner's immediate resort to the court violated the rule on exhaustion of administrative remedies.

As to the administrative claim for refund or tax credit, respondent stated that it was filed beyond the two-year period from the close of the third quarter of the taxable year which ended on June 30, 2009. There was also no written claim for refund which must be a categorical demand for reimbursement.

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[7] Id. at 76.
[8] Id. at 32 and 76.
[9] Id. at 76.
[10] SEC. 112. ***Refunds or Tax Credits of Input Tax.*** —
x x x x
(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 Subsections (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.

Respondent also pointed out that petitioner failed to comply with the requirements to substantiate its claim for tax refund or credit of input VAT under pertinent BIR regulations.[11]

In its Reply, petitioner asserted that its administrative and judicial claims for tax credit or refund of unutilized and unapplied input VAT were both timely filed, and that it submitted the documentary requirements to the RDO.[12]

At the trial, petitioner presented its witnesses and documentary evidence. On the other hand, respondent, through counsel, manifested that she will be submitting the case for decision instead of presenting her evidence.[13]

CTA Second Division Ruling

In its February 27, 2014 Decision, the Second Division held that petitioner filed its administrative claim for refund or tax credit within the 2-year period provided in Sec. 112(A)[14] of the 1997 NIRC, as amended. Since the purchases and importations were made during the taxable quarter January-March 2009, petitioner timely filed its claim for refund or tax credit with the RDO on February 9, 2011.[15]

As to the required submission of complete documents to support the application for tax refund or tax credit, the Second Division reiterated the earlier rulings of the CTA *En Banc* that such failure to submit complete documents at the administrative level is not fatal to the claim for refund. It explained that claims before the CTA are "decided based on what has been presented and offered by party litigants during the trial of the case before the court and not on mere allegation of non-submission of complete documents before the BIR."[16]

Nonetheless, the Second Division ruled that the export sales purportedly generated by petitioner in the first and second quarters of fiscal year ending June 30, 2010 cannot qualify for VAT zero-rating under Section 106(A)(2)(a)(1)[17] of the 1997 NIRC, as amended. There was no compliance

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[11] *Rollo*, pp. 79-83.
[12] Id. at 83-85.
[13] Id. at 86.
[14] SEC. 112. **Refunds or Tax Credits of Input Tax.** –
(A) ***Zero-rated or Effectively Zero-rated Sales.*** – Any VAT-registered person, whose sales are 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: x x x x x x x x
[15] *Rollo*, pp. 87-91.
[16] Id. at 90-91.
[17] SEC. 106. **Value-Added Tax on Sale of Goods or Properties.** —
(A) ***Rate and Base of Tax.*** –
x x x x

with the invoicing requirements under Section 113(A)(1), (B)(1), (2)(c) and (3) of the 1997 NIRC, as implemented by Revenue Regulations *(RR)* No. 16-2005.[18] Petitioner, likewise, failed to submit export documents such as export declarations and bills of lading or airway bills.[19] The dispositive portion reads:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[20]

Petitioner filed a Motion for Reconsideration arguing that since the BOI has certified that it exported 100% of its sales for the calendar year January 1, 2009 to December 31, 2009 and is qualified for zero-rating under the law, there is no need for a further requirement to submit its VAT zero-rated invoices and other relevant export documents. Petitioner also pointed out that under the joint stipulation of facts, respondent conceded that petitioner's sales were all regarded as zero-rated.[21]

In its May 29, 2014 Resolution, the CTA Second Division denied petitioner's Motion for Reconsideration. Petitioner then appealed to the CTA *En Banc*.

CTA *En Banc* Ruling

As stated, the CTA *En Banc* rendered its Decision affirming the Second Division's denial of petitioner's claim. The CTA *En Banc* held that compliance with the invoicing and substantiation requirements of the zero-rated transactions must be proven. It noted that export sales are determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported and that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents. Consequently, a BOI

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(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).

[18] *Rollo*, p. 93.
[19] Id. at 92-95.
[20] Id. at 95.
[21] Id. at 98-99.

Certification by itself is not sufficient to prove export sales for a particular period.[22]

It also concurred with the Second Division's ruling that the alleged export sales for the first and second quarters of the fiscal year ending June 30, 2010, in the amount of ₱3,252,883,799.44, cannot qualify for VAT zero-rating and the supposed input VAT incurred by petitioner for the period covering January 1, 2009 to March 31, 2009 in connection thereto, in the amount of ₱107,502,796.09, cannot be refunded. As found by the Second Division, petitioner failed to submit sales invoices in accordance with Sec. 113(A)(1), (B)(1), (2)(c) and (3) of the 1997 NIRC, as implemented by Revenue Regulations (RR) No. 16-2005.[23] The *fallo* reads:

> **WHEREFORE** premises considered, the petition is **DENIED** for lack of merit. The Decision of the Second Division of this Court in CTA Case No. 8301, promulgated on February 27, 2014 and its Resolution, promulgated on May 29, 2014, are hereby **AFFIRMED**. No pronouncement as to costs.
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> **SO ORDERED.**[24]

Petitioner filed a Motion for Reconsideration but it was denied under CTA *En Banc's* February 19, 2016 Resolution.[25] Hence, this recourse.

The Petition

Unperturbed, petitioner filed this petition raising two (2) points:

1. Whether or not the CTA erred in denying petitioner's claim for tax refund or tax credit of unutilized input VAT from its domestic purchases and importations for the period January 1, 2009 to March 31, 2009 in the amount of ₱107,502,796.09; and

2. Whether or not the CTA erred in ruling that a BOI Certification stating that petitioner exported 100% of its products is insufficient to prove the export sales in relation to the abovementioned claim for tax refund or tax credit; and

Petitioner contends that all the necessary information to substantiate its claim for tax refund were already submitted to respondent and the CTA. It faults the CTA for insisting on invoices, bills of lading and airway bills. Along

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[22] Id. at 42-48.
[23] Id. at 48-50.
[24] Id. at 50.
[25] Id. at 52-54.

with the BOI Certification, petitioner avers that it submitted BIR form 1914 with supporting documents, official receipts, and proof that it was paid in foreign currency in accordance with the rules of the *Bangko Sentral ng Pilipinas (BSP)*.[26]

Petitioner underscores the fact that the Republic itself, thru the BOI, acknowledged that petitioner's sales covering the period January 1, 2009 to December 31, 2009, were VAT zero-rated. Consequently, petitioner relied in good faith on the said document which signified that the BOI already made an assessment as to the nature of petitioner's export sales. Yet, the respondent and the CTA continue to demand that petitioner establish the same fact anew. In belittling the BOI Certification, petitioner charges the CTA with imposing an unduly burdensome standard for substantiation for VAT refund.[27]

Petitioner further stresses that respondent did not raise any issue or objection when the parties stipulated on the genuineness and due execution of the BOI Certification, the receipt by BIR of a copy thereof, and the BIR's confirmation through Acting Commissioner James H. Roldan that the input VAT paid by petitioner may be claimed as tax credit or refund. There being a judicial admission, there was no need for the CTA to require that petitioner establish this fact anew.[28]

In response, respondent maintains that the CTA did not err in denying petitioner's claim for tax refund which is based solely on a BOI Certification. It points out that the tax court's ruling was based on the requisites to substantiate a VAT-registered taxpayer's claim for refund or tax credit provided by law, such as the invoicing requirements and proof of export sales.[29] Thus, petitioner must prove its creditable input tax by submitting VAT zero-rated sales invoices showing that the input tax being claimed for refund or tax credit is attributable to the zero-rated transaction, which is the export of gold. Considering petitioner's failure to present VAT zero-rated sales invoices, the CTA will not be able to determine the veracity of the export sales and payment of the input VAT.[30]

As to the absence of opposition or objection by respondent to the BOI Certification, respondent contends that this does not mean petitioner need not comply anymore with the requirements under the law. Since tax refunds partake of the nature of tax exemptions, which are construed strictly against the taxpayer, evidence in support of a claim must likewise be strictly scrutinized and duly proven. Further, it has been held that the power of taxation being a high prerogative of sovereignty, its relinquishment is never

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[26] Id. at 23.
[27] Id. at 17-18 and 149-150.
[28] Id. at 18-19 and 151-153.
[29] Id. at 19-21.
[30] Id. at 131-142.

presumed. Any reduction or diminution thereof with respect to its mode or rate must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied.[31]

The Court's Ruling

We deny the petition.

At the center of the petition is a question of the evaluation of the evidence presented to warrant the grant of a tax refund or tax credit. This is beyond the ambit of an appeal by *certiorari* because the instant petition raises a question of fact rather than a question of law.

The dichotomy between questions of fact and questions of law are well-established. In *Lorzano v. Tabayag, Jr.*,[32] the Court clarified -

> A petition raising questions of law is one which raises doubts as to what the law is on a certain state of facts as opposed to a petition raising a question of fact which occurs when the doubt arises as to the truth or falsity of the alleged facts. ***For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.***[33] (emphasis supplied)

Here, petitioner insists that it had sufficiently submitted evidence that would warrant the grant of a tax credit or tax refund. It argues that the BOI certification is sufficient evidence and to require vouchers and invoices would be repetitious and unnecessary. Surely, petitioner wanted the re-examination and re-evaluation of the evidence presented which is a question of fact, which is prohibited under Rule 45 of the Rules of Court.

Even if the Court allows the re-examination of the pieces of evidence presented during trial, the Court would still affirm the findings of the CTA.

Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service, Inc. v. Court of Appeals*,[34] this Court recognizes that the Court of Tax Appeals, which by the very nature of its function, is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority.[35] Such findings can only be disturbed on

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[31] Id. at 142.
[32] 681 Phil. 39 (2012).
[33] Id. at 48.
[34] 409 Phil. 508 (2001).
[35] Id. at 514.

appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[36]

Here, a review of the records would compel the Court to support the CTA *En Banc's* conclusions. First, the records would reveal that petitioner failed to comply with the VAT invoicing requirements which is fatal to its claim for refund.

Sec. 112(A) of the 1997 NIRC provides:

> **SEC. 112. Refunds or Tax Credits of Input Tax. —**
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> **(A) Zero-rated or Effectively Zero-rated Sales.** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *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.[37]

A claim for refund or tax credit under Sec. 112(A) must comply with the following requirements: (1) the taxpayer is VAT[-]registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) where there are both zero-rated or effectively

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[36] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 180-181 (2010).

[37] As amended by R.A. No. 9337, entitled "*An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the NIRC of 1997, as Amended, And For Other Purposes*," was approved on May 24, 2005. Its effectivity clause provides that it shall take effect July 1, 2005 but due to a TRO issued by the Supreme Court, the law took effect only on Nov. 1, 2005 when the TRO was finally lifted. But the increase of the VAT rate from 10% to 12% took effect only beginning February 1, 2006.

zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (9) the claim is filed within two (2) years after the close of the taxable quarter when such sales were made.[38]

There is no dispute that petitioner is a VAT-registered entity and BOI-registered exporter of mineral products. However, the CTA found that petitioner failed to submit VAT zero-rated sales invoices and export documents, thus:

> Evidence likewise reveals that for the fiscal year ending June 30, 2009, petitioner did not generate any sales. However, for the first and second quarters of fiscal year ending June 30, 2010, petitioner purportedly 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 and ₱1,850,249,674.87 or in the sum of ₱3,252,883,799.44. These sales were allegedly paid for in U.S. Dollars through inward remittance, in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP). Petitioner argues 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 x x x
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> x x x x
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> It is undisputed that petitioner is a VAT-registered entity. While petitioner proffered before this Court documents such as official receipts, HSBC Certification, and BNP Paribas Consolidated Cash Statements proving its receipt of foreign currency remittances, **the Court[,] however[,] sees no connection or relevance 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 first and second quarters of fiscal year ending June 30, 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 period covering January to March 2009 in connection thereto in the amount of ₱107,502,796.09 cannot be refunded.
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> x x x x[39] (emphasis supplied; citations omitted)

An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and

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[38] *San Roque Power Corporation v. Commissioner of Internal Revenue,* 620 Phil. 554, 574-575 (2009).
[39] *Rollo,* pp. 92-95.

evidentiary requirements,[40] such as VAT invoicing requirements provided by tax laws and regulations.[41]

For creditable input taxes, Section 110(A)(1)[42] of the 1997 NIRC provides that these must be evidenced by a VAT invoice or official receipt, which must, in turn, comply with Sections 237 and 238 of the same law, as well as Section 4.108.1of RR 7-95. Said provisions require, *inter alia*, that an invoice must reflect, as required by law: (a) the BIR Permit to Print; (b) the TIN-V of the purchaser; and (c) the word "zero-rated" imprinted thereon. Failure to comply with the said invoicing requirements provides sufficient ground to deny a claim for tax refund or tax credit.[43]

An invoice refers to "the supporting document for the claim of input tax on purchase of goods" while an official receipt pertains to "the supporting document for the claim of input tax on purchase of services."[44] VAT invoices and receipts are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment).[45] As this Court has explained, "since no output VAT was imposed on the zero-rated export sales, what the government reimburses or refunds to the claimant is the input VAT paid – thus, the necessity for the *input VAT paid* to be substantiated by purchase invoices or official receipts."[46]

In this case, the CTA denied petitioner's claim for tax refund or tax credit of input VAT for failure to submit VAT zero-rated export sales invoices. Thus, there was no proof of the alleged zero-rated transactions. In *Silicon Philippines, Inc. v. Commissioner of Internal Revenue,*[47] the Court upheld the CTA's denial of the taxpayer's claim for refund due to its failure to comply with VAT invoicing requirements, thus:

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[40] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue,* 757 Phil. 136, 144 (2015), citing *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue,* 716 Phil. 566, 571 (2012).
[41] Id. at 140.
[42] 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;
x x x x
[43] See *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue,* supra note 40, at 571-573, citing *Eastern Telecommunications Philippines, Inc. v. CIR,* 693 Phil. 464, 472 (2012).
[44] Revenue Memorandum Circular No. 42-03: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters (2003).
[45] *Kepco Philippines Corporation v. Commissioner of Internal Revenue,* 650 Phil. 525, 542 (2010), citing *Commissioner of Internal Revenue v. Manila Mining Corporation,* 505 Phil. 650, 666 (2005).
[46] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* 550 Phil. 751, 789 (2007), citing *Commissioner on Internal Revenue v. Manila Mining Corporation,* supra at 663 (2005).
[47] 654 Phil. 492, 509 (2011).

> All told, the non-presentation of the ATP and the failure to indicate the word "zero-rated" in the invoices or receipts are fatal to a claim for credit/refund of input VAT on zero-rated sales. The failure to indicate the ATP in the sales invoices or receipts, on the other hand, is not. In this case, **petitioner failed to present its ATP and to print the word "zero-rated" on its export sales invoices. Thus, we find no error on the part of the CTA in denying outright petitioner's claim for credit/refund of input VAT attributable to its zero-rated sales.**[48](emphasis supplied)

Subsequently, in *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue,*[49] this Court similarly affirmed the CTA's denial of petitioner's claim for refund or credit of input VAT on its export sales for failure to substantiate the zero-rated export sales of the goods for input VAT refund purposes, to wit:

> In this case, records show that all of the export sales invoices presented by petitioner not only lack the word "zero-rated" but also failed to reflect its BIR Permit to Print as well as its TIN-V. Thus, it cannot be gainsaid that it failed to comply with the above-stated invoicing requirements, thereby rendering improper its claim for tax refund. Clearly, compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales. As held in *Microsoft Philippines, Inc. v. CIR*:
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> > The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. **A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales.** A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95. Contrary to Microsoft's claim, RR-7-95 expressly states that "[A]ll purchases covered by invoice other than a VAT invoice shall not give rise to any input tax. Microsoft's invoice, lacking the word "zero-rated," is not a "VAT invoice," and thus cannot give rise to any input tax.[50]

This Court has consistently held as fatal the failure to print the word "zero-rated" on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. No. 9337.[51] Petitioner's failure to submit VAT zero-

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[48] Id. at 509.
[49] Supra note 40.
[50] Id. at 573-574; citing *Microsoft Philippines, Inc. v. CIR*, 662 Phil. 762, 769 (2011).
[51] *Western Mindanao Power Corporation v. Commissioner of Internal Revenue,* 687 Phil. 328, 341 (2012), citing *Panasonic Communications Imaging Corporation of the Philippines v. CIR,* 625 Phil. 631, 643 (2010); *J.R.A. Philippines, Inc. v. CIR,* supra note 40; *Hitachi Global Storage Technologies Philippines Corp. v. CIR,* 648 Phil. 425, 432 (2010); *Kepco Philippines Corporation v. CIR,* supra note 45; *Silicon Philippines, Inc. v. CIR,* supra note 47.

rated export sales invoices thus justified the CTA's denial of its claim for refund or credit of input VAT on zero-rated sales.

Also, in an attempt to justify the non-submission of the required documents to support export sales, petitioner insist that the BOI certification takes the place of the invoices and receipts required by law. The petitioner errs.

Section 106(A)(2)(a)(1) states:

> **SEC. 106. Value-Added Tax on Sale of Goods or Properties. -**
>
> (A) Rate and Base of Tax. -
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> x x x x
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> (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)**; (emphases supplied)

The term "export sales" is further defined in Article 23 of the Omnibus Investments Act of 1987 (Executive Order No. 226), as follows:

> ARTICLE 23. "**Export sales**" shall mean the Philippine port F.O.B. value, determined from **invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents**, of exports products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided,* That **sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents:** x x x (emphases supplied)

Thus, the CTA is correct in requiring the submission of export declarations and bills of lading or airway bills and the like to prove petitioner's export sales. The Court rules that the BOI certification is insufficient to support its claim for refund.

The much touted BOI Certification, which provides that it has exported 100% of its total sales volume, was issued pursuant to Revenue Memorandum

Order *(RMO)* No. 9-2000 issued on March 29, 2000. RMO 9-2000 prescribes the conditions for the automatic zero-rating of sales of goods, properties and services made by VAT-registered *suppliers* to BOI-registered manufacturers-exporters with 100% export sales. Among those conditions is that the buyer must be a BOI-registered manufacturer/producer whose products are 100% exported as certified by the BOI. For this purpose, a certification to that effect must be issued by the BOI which shall be valid for one (1) year. The BOI-registered buyer, in turn, is required to furnish each of its suppliers with a copy of such certification. Such certification will then serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers.[52]

Clearly, petitioner is mistaken in concluding that submission of the BOI Certification satisfies the required substantiation of engagement in zero-rated transactions under Sec. 112 of the 1997 NIRC. The certification is not evidence of an export sale that transpired. The CTA therefore correctly rejected said document as proof of the zero-rated export sale transactions.

In this light, the parties' joint stipulation[53] during the proceedings before the CTA on the genuineness and due execution of the BOI Certification becomes insignificant. The said document is insufficient to prove the zero-rated export sales for purposes of refund of input VAT from petitioner's domestic purchases of goods and importations. Moreover, the admission pertains solely to the fact of issuance of the BOI Certification and does not relieve petitioner of the burden of presenting before the CTA the factual basis of its claim for refund.

The Court reiterates the well-entrenched rule that tax refunds, like tax exemptions, are construed strictly against the taxpayer.[54] The claimants have the burden of proof to establish the factual basis of their claim for refund or tax credit.[55] There must be strict compliance not only with the prescriptive periods but also with the substantive requirements set by law before a claim for tax refund or credit may prosper.[56]

WHEREFORE, premises considered, the Court **DENIES** the Petition and **AFFIRMS** the Decision and Resolution promulgated on January 4, 2016

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[52] Paragraph D, BOI Guidelines on the Issuance of Certification to BOI-registered Companies Pursuant to BIR Revenue Memorandum Order No. 9-2000.
[53] *Rollo*, p. 19.
[54] *Hitachi Global Storage Technologies Philippines Corp. v. CIR,* supra note 51, at 433 (2010), citing *Commissioner of Internal Revenue v. Bank of the Philippines Islands,* 609 Phil. 678, 693 (2009); *Commissioner of Internal Revenue v. Seagate Technology,* 491 Phil. 317, 342 (2005).
[55] Id.
[56] *Team Energy Corporation v. Commissioner of Internal Revenue,* G.R. Nos. 197663 and 197770, March 14, 2018, 859 SCRA 1, 26, citing *Commissioner of Internal Revenue v. San Roque Power Corp.,* 703 Phil. 310, 357 (2013) and *Commissioner of Internal Revenue v. Manila Mining Corp.,* supra note 45, at 663.

and February 19, 2016, respectively, of the Court of Tax Appeals *En Banc* in CTA EB Case No. 1192.

SO ORDERED."

By authority of the Court:

MisaelDCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court 7/17/2020

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