Republic of the Philippines
Supreme Court
Manila



**FIRST DIVISION**

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| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **G.R. No. 236325** |
| | Present: |
| *-versus-* | PERALTA, *CJ., Chairperson,* CAGUIOA, REYES, J., JR., LAZARO-JAVIER, and LOPEZ, *JJ.* |
| **FILMINERA RESOURCES CORPORATION,** Respondent. | Promulgated: SEP 16 2020 |

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# D E C I S I O N

**LOPEZ, *J.*:**

Proof of actual exportation of goods sold by a Value Added Tax (VAT)-registered taxpayer to a Board of Investments (BOI)-registered enterprise is vital for the transaction to be considered as zero-rated export sales.

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated March 29, 2017 and Resolution[3] dated November 16, 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1362, which upheld the Amended Decision[4] dated May 25, 2015 and Resolution dated September 10, 2015 of the CTA Division in CTA Case Nos. 8528 & 8576 ordering the Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate (TCC) in

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1 *Rollo*, pp. 27-40.

2 *Id.* at 49-81; penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban, and the dissent of Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.

3 *Id.* at 89-96.

4 *Id.* at 126-138; penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas.

favor of Filminera Resources Corporation (Filminera Resources) in the amount of ₱111,579,541.76.

## ANTECEDENTS

On July 5, 2007, Filminera Resources and Philippine Gold Processing and Refining Corporation (PGPRC), a domestic corporation registered with the BOI, entered into an Ore Sales and Purchase Agreement.[5] For the third and fourth quarters of the fiscal year (FY) ending June 30, 2010, Filminera Resources' sales were all made to PGPRC.[6]

On March 30, 2012 and June 29, 2012, Filminera Resources filed its amended quarterly VAT returns for the third and fourth quarters, respectively.[7] On the same dates, Filminera Resources filed administrative claims for refund or issuance of TCC of its unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters.

Thereafter, on August 16, 2012 and November 23, 2012, Filminera Resources filed separate petitions for review before the CTA, which were docketed as CTA Case No. 8528 and CTA Case No. 8576.[8] The CIR filed his answer in CTA Case No. 8528 on October 23, 2012,[9] and in CTA Case No. 8576 on December 12, 2012.[10] The two cases were consolidated,[11] and thereafter, trial on the merits ensued.

On September 25, 2014, the CTA Division denied Filminera Resources' petitions on the ground of insufficiency of evidence.[12] The CTA Division held that Filminera Resources failed to prove that its sales to PGPRC during the third and fourth quarters of FY 2010 qualify as export sales subject to the zero percent (0%) rate under Section 106(A)(2)(a)(5)[13] of the 1997 National Internal Revenue Code,[14] as amended by Republic Act

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5 *Id.* at 98.
6 *Id.* at 135.
7 *Id.*
8 *Rollo*, p. 99.
9 *Id.* at 104.
10 *Id.* at 99.
11 *Id.* at 118.
12 *Id.* at 97-125. The dispositive portion of the Decision reads:
> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED**. *Id.* at 124. (Emphasis in the original.)

13 SECTION 106. *Value-added Tax on Sale of Goods or Properties.* —
(A) Rate and Base of Tax. – x x x
x x x x
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) Export Sales. — The term "export sales" means:
x x x x
(5) Those considered export sales under Executive Order No. 226, otherwise known as the "Omnibus Investment Code of 1987[,"] and other special laws.

14 Republic Act (RA) No. 8424, December 11, 1997.

No. 9337 (1997 NIRC), and Section 4.106-5(a)(5)[15] of Revenue Regulations (RR) No. 16-2005.[16]

Filminera Resources sought reconsideration and submitted a certified true copy of BOI Certification dated January 27, 2010[17] to establish that PGPRC was a BOI-registered enterprise that exported its total sales volume from July 1, 2009 to June 30, 2010. The CIR counter-argued that the BOI Certification failed to prove that all of PGPRC's products from January 1, 2010 to June 30, 2010 were actually exported.

On May 25, 2015, the CTA Division amended its Decision[18] on petitioner's motion for reconsideration dated September 25, 2014. Considering that the validity period of the BOI Certification covered the period subject of the claims for refund, the CTA Division concluded that Filminera Resources' sales were zero-rated, *viz.*:

> **WHEREFORE**, [Filminera Resources'] **Motion for Reconsideration of the Decision dated 25 September 2014** is **PARTIALLY GRANTED**. Accordingly, the assailed Decision promulgated on September 25, 2014 is hereby **AMENDED** to read as follows:
>
> > "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, [the CIR] is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of [Filminera Resources] in the amount of ₱111,579,541.76, representing [Filminera Resources'] unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of FY ending June 30, 2010."

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15 SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties*. — A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export sales. — "*Export Sales*" shall mean:

x x x x

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

x x x x

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and Provided, finally, that **sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.** (Emphasis supplied.)

16 Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

17 *Rollo*, pp. 128 and 131.

18 *Supra* note 4.

**SO ORDERED.**[19] (Emphasis in the original.)

The CIR's motion for reconsideration was denied on September 10, 2015.[20] Hence, the CIR elevated the case to the CTA *En Banc*.

On March 29, 2017, the CTA *En Banc* dismissed the petition for lack of merit.[21] On reconsideration, the CIR insisted that the BOI Certification was not sufficient to support Filminera Resources' claim for refund because there must be proof of actual exportation of PGPRC's products.[22] Besides, the BOI Certification was a forgotten evidence, which was not presented during the trial.

On November 16, 2017, the CTA *En Banc* denied the CIR's motion and ruled:[23]

> x x x, with the formal offer and admission into evidence of the BOI Certification that PGPRC exported 100% of its total sales volume, [Filminera Resources'] sales thus qualify for VAT zero-rating under the law.
>
> **WHEREFORE**, premises considered, the [CIR]'s Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[24] (Emphasis in the original.)

Hence, the CIR filed the instant petition before this Court.

The CIR maintains that the BOI Certification dated January 27, 2010 does not satisfy the conditions imposed by law and the rules for the sales made to PGPRC be considered as zero-rated sales. The certification merely provides that the period covered is from January 1 to December 31, 2009, and does not state that PGPRC exported 100% of its products from January 1 to June 30, 2010, which are the period subject of the claims for refund. Further, it was impossible for the BOI to certify that PGPRC exported its entire products from January 1 to June 30, 2010 because the certification was issued only on January 27, 2010. Lastly, the extension of the certification's validity period until December 31, 2010 was intended to give taxpayers an extended period to avail of the benefits of zero-rating.

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19 *Rollo*, pp. 136-137
20 *Id.* at 50.
21 *Supra* note 2. The dispositive portion of the Decision reads:
**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.
**SO ORDERED**. *Rollo*, p. 80. (Emphasis in the original.)
22 *Rollo*, pp. 89-90.
23 *Supra* note 3.
24 *Rollo*, p. 95.

In compliance with this Court's Resolution[25] dated June 18, 2018, Filminera Resources filed its Comment[26] on October 23, 2018, after requesting for two extensions.[27]

Filminera Resources counters that the petition should be dismissed outright for failure to conform to the prescribed format in violation of Section 4,[28] Rule 45 of the Rules of Court. Filminera Resources avers that its copy of the petition was not accompanied by any copy of the CTA *En Banc*'s assailed Decision and Resolution, as well as material portions of the records as would support the petition. Further, the petition raises a question of fact which is beyond the ambit of a Rule 45 petition. In any case, Filminera Resources posits that the CTA *En Banc* did not err in concluding that its sales for the third and fourth quarters of FY 2010 were zero-rated.

In his Reply,[29] the CIR claims that a copy of the petition served to Filminera Resources had the attachments required by the Rules of Court. Also, what the petition seeks to correct is the CTA *En Banc*'s wrongful appreciation of the BOI Certification as sufficient compliance with one of the conditions imposed by law and the rules for the transaction to be considered export sales. This is a question of law and not a question of fact.

## RULING

The petition is meritorious.

Procedurally, Section 4,[30] Rule 45 of the Rules of Court requires the CIR to attach all material portions of the record as would support the allegations in the petition. Here, the petition was accompanied by duplicate original of the CTA *En Banc*'s Decision[31] dated March 29, 2017 and certified true copy of the Resolution[32] dated November 16, 2017. The CIR, however, did not attach a copy of the BOI Certification dated January 27, 2010, which

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25 *Id.* at 180A-180B.

26 *Id.* at 198-209.

27 *Id.* at 186-189, 192-195.

28 Section 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

29 *Rollo*, pp. 219-224.

30 *Supra.*

31 *Rollo*, pp. 49-81.

32 *Id.* at 89-96.

was the basis of the CTA in granting refund to Filminera Resources. Undoubtedly, the BOI Certification is a material portion of the records that should be attached to the petition.

Nonetheless, the BOI Certification was reproduced in the Dissenting Opinion[33] of Presiding Justice Del Rosario to the Decision dated March 29, 2017. The CIR attached to the petition duplicate original of the dissenting opinion.[34]

In *Cusi-Hernandez v. Sps. Diaz*,[35] we held that "[t]he fact that no certified true copy of the Contract to Sell was attached to the Petition before the CA did not weaken the petitioner's case."[36] Based on *Cadayona v. Court of Appeals*,[37] not all of the supporting papers accompanying the petition should be certified true copies. In that case, the documents attached by the petitioner consisted only of the original duplicate copies of the assailed Decisions and Orders of the lower court but the contract to sell was not annexed. Since the Metropolitan Trial Court Decision attached to the petition reproduced *verbatim* the contract to sell and a certified true copy of the contract was also attached to the motion for reconsideration, we declared that there was substantial compliance with the rules.[38]

Thus, by attaching to the petition a duplicate original of the Dissenting Opinion which reproduced *verbatim* the BOI Certification, the CIR, at the

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33 See *id.* at 83-84.

34 *Id.* at 82-85.

35 390 Phil. 1245 (2000), cited in *Atillo v. Bombay*, 404 Phil. 179, 188 (2001).

36 *Id.* at 1251.

37 381 Phil. 619 (2000). Relevant portion of the decision reads: "Section 6 of Rule 1 states that the Rules "shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding." In line with this guideline, **we do not construe the above-quoted section as imposing the requirement that all supporting papers accompanying the petition should be certified true copies.** A comparison of this provision with the counterpart provision in Rule 42 (governing petitions for review from the RTC to the CA) would show that under the latter, only the judgments or final orders of the lower courts need be certified true copies or duplicate originals. Also under Rule 45 of the Rules of Court (governing Appeals by *Certiorari* to the Supreme Court), only the judgment or final order or resolution accompanying the petition must be a clearly legible duplicate original or a certified true copy thereof certified by the clerk of court of the court a quo. Even under Rule 65 governing *certiorari* and prohibition, petitions need be accompanied by certified true copies of the questioned judgment, it being sufficient that copies of all other relevant documents should accompany the petition. Numerous resolutions issued by this Court emphasize that **in appeals by *certiorari* under Rules 45 and original civil actions for *certiorari* under Rule 65 in relation to Rules 46 and 56, what is required to be a certified true copy is the copy of the questioned judgment, final order or resolution. No plausible reason suggests itself why a different treatment, *i.e.* a stricter requirement, should be given to petitions under Rule 43, which governs appeals from the Court of Tax Appeals and quasi-judicial agencies to the Court of Appeals.** None could have been intended by the framers of the Rules. A contrary ruling would be too harsh and would not promote the underlying objective of securing a just, speedy and inexpensive disposition of every action and proceeding. It must be conceded that obtaining certified true copies necessary entails additional expenses that will make litigation more onerous to the litigants. Moreover, certified true copies are not easily procurable and party litigants must wait for a period of time before the certified true copies are released. At any rate, the entire records of the case will eventually be elevated to the appellate court." *Id.* at 626-627. (Emphasis supplied.)

38 *Id.* at 627.

very least, substantially complied with the requirements embodied in Rule 45 of the Rules of Court. We have consistently held that a strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided,[39] as in this case.

***The issue raised before this Court is a question of law.***

It is well-settled that only questions of law may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Questions of fact are generally proscribed. As applied to claims for refund of taxes, a question of law may be distinguished from a question of fact, as follows:

> x x x the proper interpretation of the provisions on tax refund that *does not* call for an examination of the probative value of the evidence presented by the parties-litigants is a question of law. Conversely, it may be said that if the appeal essentially calls for the re-examination of the probative value of the evidence presented by the appellant, the same raises a *question of fact. Often repeated is the distinction that there is a question of law in a given case when doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when doubt or difference arises as to the truth or falsehood of alleged facts.*[40] (Italics supplied.)

The CIR asserts that the BOI Certification issued on January 27, 2010 merely established that PGPRC exported 100% of its products for the period from January 1 to December 31, 2009. It does not prove that PGPRC similarly exported its entire products during the period subject of the claims for refund – the third and fourth quarters of FY 2010 or from January 1 to June 30, 2010. The BOI Certification, therefore, does not satisfy one of the conditions imposed under the 1997 NIRC that the BOI-registered buyer exported 100% of its products. Also, the extension of the validity period of the certification until December 31, 2010 is intended to give the seller-taxpayer an extended period to avail of the benefits of zero-rating and does not apply to subsequent sales not identified in the certification.

Essentially, the issue is whether the sales made to PGPRC for the third and fourth quarters of the FY ending June 30, 2010 are zero-rated export sales based on the certification issued by the BOI on January 27, 2010. This is a question of law which does not burden the Court to examine the probative value of the BOI Certification presented. The petition mainly requires us to determine the scope of the BOI Certification and the period

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[39] *Cusi-Hernandez v. Sps. Diaz, supra* note 35 at 1252. See also Spouses *Spouses Lanaria v. Planta*, 563 Phil. 400, 416 (2007).

[40] *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, 762 Phil. 450, 460 (2015).

when PGPRC exported 100% of its products. These are questions well within the bounds of a Rule 45 Petition.

***The sales made to PGPRC during the third and fourth quarters of FY 2010 do not qualify for zero-rating; Filminera Resources is not entitled to a refund or credit of input VAT attributable to such sales.***

"Export sales" is defined in Executive Order No. 226[41] as "the Philippine port F.O.B. value x x x of export 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 x x x."[42]

The foregoing export sales was included in the list of sales subject to the zero percent rate under Section 106(A)(2)(a)(5) of the 1997 NIRC:

> SECTION 106. Value-added Tax on Sale of Goods or Properties. —
>
> (A) *Rate and Base of Tax.* — x x x
>
> x x x x
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term '*export sales*' means:
>
> x x x x
>
> (5) **Those considered export sales under Executive Order No. 226**, otherwise known as the Omnibus Investment Code of 1987, and other special laws x x x. (Emphasis supplied.)

The tax treatment of export sales is based on the Cross Border Doctrine and Destination Principle of the Philippine VAT system. Under the Destination Principle, goods and services are taxed only in the country where these are consumed.[43] In this regard, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for

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41 THE OMNIBUS INVESTMENTS CODE OF 1987, July 16, 1987.

42 See Executive Order No. 226, Article 23.

43 *Atlas Consolidated Mining and Dev't Corp. v. Commissioner of Internal Revenue*, 551 Phil. 519, 544 (2007), citing *Commissioner of Internal Revenue v. Seagate Technology (Phils.)*, 491 Phil. 317 (2005).

consumption outside the territorial border of the taxing authority.[44] Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT. Plainly, sales of export products to another producer or to an export trader are subject to zero percent rate provided the export products are actually exported and consumed in a foreign country.

In Revenue Memorandum Circular No. 74-99,[45] the Bureau of Internal Revenue (BIR) clarified that sales made to PEZA-registered enterprises qualify for zero-rating pursuant to the cross-border doctrine. The ECOZONE[46] is treated as a separate customs territory such that the buyer is treated as an importer and is imposed the corresponding import taxes and customs duties on his purchase of products from within the ECOZONE. While ECOZONE enterprises are not necessarily manufacturer-exporters of products, taken as a whole, all their integrated activities eventually translate into manufactured products which are either actually exported to foreign countries, in which case, no VAT shall form part of the export price; or actually sold to buyers from the customs territory, in which case, the regular VAT shall be paid by the buyers.

The BIR similarly applied the cross-border doctrine to sales made by VAT-registered suppliers to BOI-registered enterprises whose products are 100% exported. Section 2 of Revenue Memorandum Order (RMO) No. 09-00[47] states:

> SECTION 2. Rationale. — In Revenue Memorandum Circular No. 74-99, x x x it has been clarified that sales of goods, property and services made by VAT-registered suppliers to PEZA-registered enterprises shall qualify for zero-rating pursuant to the provisions of Section 106(A)(2)(a)(5) of the National Internal Revenue Code of 1997, in relation to Section 23 of R.A. No. 7916 (the PEZA Law) and Article 77 (2) of Executive Order No. 226 (the Omnibus Investments Code of 1987). **This treatment is anchored on the "Cross Border Doctrine" of the VAT System, which in essence means that no value-added tax shall form part of the cost component of products which are destined for consumption outside of the territorial border of the Philippines. This principle is achieved through the application of VAT zero-rating products exported from the Philippines to foreign countries**. Furthermore, Article 25 of the Omnibus Investments Code provides, among others, that products sold "to bonded manufacturing

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44 *Atlas Consolidated Mining and Dev't Corp. v. Commissioner of Internal Revenue, id.*

45 Tax Treatment of Sales of Goods, Properties and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise, and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE, October 15, 1999.

46 The ECOZONES are selected areas with highly developed or which have the potential to be developed into agro-industrial, industrial tourist/recreational, commercial, banking, investment and financial centers. See Sec. 4(a), RA No. 7916.

47 Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales, February 2, 2000.

warehouses of export-oriented manufacturers shall be considered "constructively exported" while Section 106(A)(2)(a)(5) NIRC of 1997, provides for the **application of zero rating to "those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."**

**The rationale of RMC 74-99 may also find application to sales made by VAT registered suppliers to BOI-registered enterprises whose manufactured products are 100% exported to foreign countries and therefore said sales can likewise be accorded automatic zero-rating treatment**. (Emphases supplied.)

To qualify for VAT zero-rating, Section 3 of RMO No. 09-00[48] requires compliance with the following conditions:

SECTION 3. *Sales of goods, properties or services made by a VAT-registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions*:

(1) The supplier must be VAT-registered,

(2) The BOI-registered buyer must likewise be VAT-registered;

(3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly-registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec. 4.108-1(5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer.

In 2005, the BIR issued RR No. 16-2005, or the Consolidated VAT Regulations of 2005. Section 4.106-5(a)(5) classified sales to BOI-registered entities as zero-rated export sales, *viz.*:

SECTION 4.106-5. Zero-Rated Sales of Goods or Properties. — A zero-rated sale of goods or properties (by a VAT-registered person) is a

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48 *Id.*

taxable transaction for VAT purposes, but shall not result in any output tax. However, **the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.**

**The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:**

**(a) Export sales. — "Export Sales" shall mean:**

x x x x

**(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.**

x x x x

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and Provided, finally, that **sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.** (Emphasis supplied.)

Accordingly, sales made to a BOI-registered buyer are export sales subject to the zero percent rate if the following conditions are met: (1) the buyer is a BOI-registered manufacturer/producer; (2) the buyer's products are 100% exported; and (3) the BOI certified that the buyer exported 100% of its products. For this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit.

In the present case, the Certification issued by the BOI to PGPRC on January 27, 2010 reads:

RMO 9-2000/BOI-ID Certificate No. 2010-057
Date Filed: January 15, 2010
Appln. No.: 2010-C107

CERTIFICATION

This is to certify that PHIL. GOLD PROCESSING & REFINING CORP. is registered with the BOARD of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data:

x x x x

Information is hereby given that **the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2009** based on the attached documents (Annexes B & C) submitted to the BOI, summarized as follows:

| | | |
|---|---|---|
| TIN | | 233-903-100-000 |
| Total Sales Volume/Value* | | 3,820,982.5 g / $75,178,299.96 |
| Total Export Sales Volume/Value | | 3,820,982.5 g / $75,178,299.96 |
| Direct Export Volume/Value | | 3,820,982.5 g / $75,178,299.96 |
| Constructive Export Volume/Value | | None |
| Indirect Export Volume/Value | | None |
| **% of Export to Total Sales** | | **100%** |
| **Period Covered** | | **CY January 01 to December 31, 2009** |

*subject to post audit in case of computational discrepancy

It is understood that based on the affidavit executed by Phil. Processing & Refining Corp., attached as Annex "A[,"] all information provided therein are true and correct, and any misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil actions that may be warranted under the premises.

This Certification is issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled "Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales" dated February 2, 2000.

**This Certification is valid from January 01 to December 31, 2010 unless sooner revoked by the BOI Governing Board** for any or all of the following grounds: (a) Failure of the herein registered enterprise to comply with any of its BOI registration terms, commitment, and conditions; (b) Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations.

Since the [firm's] accounting reporting period ends every 30th day of June, its succeeding application should be filed within fifteen (15) days from the end of the said fiscal year period in order that the BOI [C]ertification to be issued shall be valid for a period of one (1) year effective from the date of the start of the new fiscal year.

This Certification is issued in accordance to Section 3.3 of subject RMO No. 9-2000 on this 27th day of January 2010 at Makati City, Philippines, upon the request of the Phil. Gold Processing & Refining Corp., subject to the foregoing conditions.

(signed)
LUCITA P. REYES

Executive Director
Project Assessment Group[49]
(Emphasis supplied.)

The CTA *En Banc* noted that the certification was valid from January 1 to December 31, 2010. Considering that the period of the claim for refund (January 1 to June 30, 2010) was within the validity period of the certification, the CTA *En Banc* concluded that Filminera Resources' sales for the third and fourth quarters of FY 2010 were zero-rated.

We do not agree.

*First.* A plain reading of the certification shows that PGPRC exported a total of 3,820,982.5 grams, or 100% of its total sales volume/value, from **January 1 to December 31, 2009**. However, nothing in the certification shows that PGPRC similarly exported its entire products for the third and fourth quarters of FY 2010, or from **January 1 to June 30, 2010**. Without the certification from the BOI that the products sold to PGPRC during the third and fourth quarters of FY 2010 were ***actually exported and consumed in a foreign country***, the sales cannot be considered export sales.

*Second.* The validity period of the BOI certification should not be confused with the period identified in the certification when the buyer actually exported 100% of its products. It must be remembered that taxpayers with zero-rated sales may claim a refund or tax credit for the VAT previously charged by the suppliers (*i.e.*, the input tax) because the sales had no output tax. However, to be entitled for the refund or tax credit, the taxpayer must not only prove the existence of zero-rated sales, but must also prove that the zero-rated sales were issued valid invoice or official receipts pursuant to Sections 113(A) and (B),[50] and 237[51] of the 1997 NIRC, in relation to Section

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49 *Rollo*, pp. 83-84.

50 SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
(A) *Invoicing Requirements.* — A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
(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:
x x x x
(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;
x x x x

51 SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of

4.113-1(B)[52] of RR No. 16-2005.[53] In Revenue Memorandum Circular No. 42-2003,[54] the BIR clarified that if the claim for refund or tax credit is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices, *e.g.* the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt, the claim for refund or tax credit shall be denied.[55]

To ensure compliance with invoicing requirements, Section 3 of RMO No. 09-00 requires the BOI-registered buyer to furnish its suppliers with a copy of the BOI Certification attesting that it exported 100% of its products. The certification having been issued by the BOI, there is a presumption that it was issued in the regular performance of official duties. Thus, the supplier can rely on the certification and accord zero-rating status to sales made to the BOI-registered buyer while the BOI certification is valid. Consequently, the seller would be able to comply with the invoicing requirements. The BOI-registered buyer must, however, *actually export* its products. To be sure, the certification contains a *proviso* that the attestation of 100% exportation by the BOI-registered buyer will be revoked in case of non-compliance with any of the specified grounds, particularly, the failure to export its entire products:

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merchandise or nature of service: *Provided, however*, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

x x x x

[52] SECTION 4.113-1. *Invoicing Requirements.* —

x x x x

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

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

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

x x x x

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

x x x x. (Emphasis supplied.)

[53] See *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*, 687 Phil. 328 (2012); and *Microsoft Phils, Inc. v. Commissioner of Internal Revenue*, 662 Phil. 762 (2011). See also *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, 716 Phil. 566 (2013).

[54] 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, July 15, 2003.

[55] Revenue Memorandum Circular No. 42-2003; Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, ([*e.g.*], sales invoices must bear the TIN of the seller)?

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

**If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices** ([*e.g.*] failure to indicate the TIN), **its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales.** x x x. (Emphasis supplied.)

> **This Certification is valid from January 01 to December 31, 2010 unless sooner revoked by the BOI Governing Board for any or all of the following grounds**: (a) Failure of the herein registered enterprise to comply with any of its BOI registration terms, commitment, and conditions; (b) **Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000**; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations.[56] (Emphasis supplied.)

Indeed, while the BOI certification allows the seller to accord VAT zero-rating status to sales made to the BOI-registered buyer during the extended period of the certification, this must be pre-empted by the condition that the BOI-registered buyer *actually and eventually exported* such products. This is consistent with the Cross Border Doctrine and Destination Principle of the Philippine VAT system. To hold otherwise would render nugatory the principle that goods are taxed only in the country where these are consumed and that no VAT shall form part of the cost of products which are destined for consumption outside of the territorial border of the Philippines.

*Third.* The validity period of the certification is intended to accord zero-rating status to sales made during the extended period, but not as proof that PGPRC exported its entire products during the same period. This is logical since the BOI can attest to the actual exportation only *after* the end of the taxable year. As in this case, the certification issued by the BOI on January 27, 2010 is not relevant for purposes of treating the sales made to PGPRC from January 1 to December 31, 2009 zero-rated. When the certification was issued on January 27, 2010, Filminera Resources had *already* classified its sales as zero-rated. Instead, the certification serves as authority for Filminera Resources to accord zero-rating status to sales made to PGPRC *within one year from validity*, or from **January 1 to December 31, 2010**. The BOI Certification is clear:

> Since the [firm's] accounting reporting period ends every 30th day of June, its succeeding application should be filed within fifteen (15) days from the end of the said fiscal year period **in order that the BOI Certification to be issued shall be valid for a period of one (1) year effective from the date of the start of the new fiscal year.**[57] (Emphasis supplied.)

In order for the sales made to PGPRC during the third and fourth quarters of FY 2010 qualify as zero-rated sales, the BOI must still certify that PGPRC actually exported its entire product from January 1 to December 31, 2010. The BOI Certification dated January 27, 2010 failed to ascertain this fact.

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56 *Supra* note 49.
57 *Rollo*, p. 84.

*Fourth.* We stress that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund.[58] After all, tax refunds partake the nature of exemption from taxation, and as such, must be looked upon with disfavor. It is regarded as in derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify his claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

Under Section 112(A)[59] of the 1997 NIRC, the seller may claim a refund or tax credit for the input VAT attributable to its zero-rated sales subject to the following conditions: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2),[60] Section 106(B)[61]

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[58] *Atlas Consolidated Mining and Dev't Corp. v. Commissioner of Internal Revenue, supra* note 43 at 546.

[59] Section 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 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.

[60] SEC. 106. Value-Added Tax on Sale of Goods or Properties. —

(A) *Rate and Base of Tax.* —

x x x x

(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);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

x x x x.

[61] SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* —

x x x x

(B) *Transactions Deemed Sale.* — The following transactions shall be deemed sale:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;

and Section 108(B)(1) and (2)[62] of the 1997 NIRC, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* rules and regulations.[63]

The first and third requisites have been established before the CTA. Filminera Resources is a VAT-registered taxpayer that filed administrative and judicial claims for refund within the period prescribed by law.[64] Meanwhile, the fifth requisite is not applicable.[65]

As for the second requisite, Filminera Resources failed to prove that its sales to PGPRC for the third and fourth quarters of FY 2010 are export sales. We reiterate that without the certification from the BOI attesting actual exportation by PGPRC of its entire products from January 1 to June 30, 2010, the sales made during that period are not zero-rated export sales. The second requisite not having been met, there is no need for us to discuss the fourth requirement.

In fine, Filminera Resources Corporation is not entitled to a refund or the issuance of tax credit certificate in the amount of ₱111,579,541.76, representing its unutilized input value-added tax attributable to zero-rated sales for the third and fourth quarters of the fiscal year ending June 30, 2010.

**FOR THESE REASONS**, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated March 29, 2017 and Resolution dated November 16, 2017 of the Court of Tax Appeals *En Banc* in CTA EB No. 1362 are **REVERSED**. Filminera Resources Corporation is not entitled to a refund or the issuance of a tax credit certificate in the amount of ₱111,579,541.76.

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(2) Distribution or transfer to:
(a) Shareholders or investors as share in the profits of the VAT-registered persons; or
(b) Creditors in payment of debt;
(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and
(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

62 SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

x x x x

(B) Transactions Subject to Zero Percent (0%) Rate. — x x x
(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

x x x x.

63 *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*, 640 Phil. 613, 617 (2010), citing *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, 550 Phil. 751 (2007).

64 See *rollo*, pp. 74-75.

65 See *supra* notes 60, 61 and 62.

**SO ORDERED.**

**MARIO V. LOPEZ**
Associate Justice

**WE CONCUR:**

**DIOSDADO M. PERALTA**
Chief Justice
Chairperson

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

**JOSE C. REYES, JR.**
Associate Justice

**AMY C. LAZARO-JAVIER**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**DIOSDADO M. PERALTA**
Chief Justice