REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

FCF MINERALS CORPORATION, Petitioner,	**CTA EB NO. 2558** (CTA Case No. 8789)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and,* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF CUSTOMS, Respondent.	Promulgated: SEP 04 2023 4:15 pm

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner FCF Minerals Corporation (**petitioner/FCF**) assailing the Amended Decision dated 15 March 2021[2] (**assailed Amended Decision**) and Resolution dated 20 October 2021[3] (**assailed Resolution**) of the Third Division[4] in CTA Case No. 8789, entitled *FCF Minerals Corporation v. Commissioner of Customs*, invoking Section 3(b)[5], Rule 8, in relation to

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[1] Filed on 10 January 2022, *Rollo*, pp. 9-46.
[2] Division Docket, Volume VI, pp. 2698-2719.
[3] Id., pp. 2764-2769.
[4] Penned by Associate Justice Maria Rowena Modesto-San Pedro, with Associate Justice Erlinda P. Uy (Ret.) and Associate Justice Ma. Belen M. Ringpis-Liban, concurring.
[5] **SEC. 3**. *Who may appeal; period to file petition. —*
...

Section 2(a)(1)[6], Rule 4 of the Revised Rules of the Court of Tax Appeals[7] (**RRCTA**).

PARTIES TO THE CASE

Petitioner is a corporation organized and existing under Philippine laws and engaged in the exploration, development and commercial operation of mineral claims.[8]

On the other hand, respondent Commissioner of Customs (**respondent/COC**) is the head of the Bureau of Customs (**BOC**), which is a government instrumentality under the Department of Finance tasked with the "[t]he assessment and collection of the lawful revenues from imported articles and all other dues, taxes, fees and charges, fines and penalties accruing under the tariff and customs laws".[9]

FACTS OF THE CASE

The facts of the case, as culled from the assailed Amended Decision[10], are as follows:

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

...

6 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

...

7 A.M. No. 05-11-07-CTA.

8 Paragraph (par.) 1, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume III, p. 1111.

9 Par. 2, id., citing Section 602, Title I, Book II, Tariff and Customs Code of the Philippines.

10 Pursuant to Section 2, Rule 14 of the RRCTA stating that "in appealed cases, the Court may adopt by reference the findings and conclusions set forth in the decision, order or resolution appealed from".

...

On 19 September 2009, petitioner and the Republic of the Philippines entered into a Financial or Technical Assistance Agreement ("FTAA") where petitioner, acting as an FTAA Contractor, was to provide large-scale exploration, development, and commercial utilization of minerals in Quezon, Nueva Vizcaya, in exchange for the exclusive right to conduct mining operations in the said area. The project was called the "Runruno Gold Molybdenum Project."

On 15 February 2013, the BIR issued Revenue Memorandum Circular[11] ("RMC") No. 17-2013, declaring that FTAA contractors are liable to pay taxes due under the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code") and existing rules and regulations during and after their "Recovery Period."

Meanwhile, on different dates, petitioner imported several capital equipment, as follows:

Date of Entry	Import Entry No.	Description
18 April 2013	C48170	78 pkgs. Dump Trucks
18 April 2013	C44534	10 pkgs. Hydraulic Excavator
18 April 2013	C44535	50 pkgs. Hydraulic Excavator, Motor Grader, Bulldozer
18 October 2013	C122537	1 Bundle Steel Rails
12 December 2013	C146371	12 pkgs. 3T Forklift and spare parts

In connection with the foregoing importations, respondent collected VAT and customs fees from petitioner in the total amount of ₱57,896,506.00. This prompted petitioner to file Letter Protests to the District Collector of the BOC, Port of Manila, bearing the following docket numbers on the following dates:

Docket Number	Date Filed	Import Entry No.	Amount (VAT and Fees)
2013-224	29 October 2013	C48170	₱26,687,444.00
2013-225	29 October 2013	C44534	5,296,716.00
2013-226	29 October 2013	C44535	25,572,871.00
2013-227	4 November 2013	C122537	23,345.00
2013-253	18 December 2013	C146371	316,130.00
TOTAL			**₱57,896,506.00**

[11] Clarifying the Taxes Due from Financial or Technical Assistance Agreement (FTAA) Contractors during "Recovery Periods".

Subsequently, the District Collector of the BOC issued a Decision (hereinafter referred to as "DC Decision"), dated 3 January 2014, denying petitioner's Letter Protests on the basis of RMC No. 17-2013. The DC Decision was received by petitioner on 7 January 2014.

Aggrieved, petitioner, on 21 January 2014, filed a Notice of Appeal with the District Collector of the BOC expressing its intent to appeal the DC Decision. It also requested the transmittal of its case records to the Office of respondent.

In light of the Notice of Appeal, the District Collector of the BOC issued the 1st Indorsement on 28 January 2014, endorsing the case records of the above-stated Letter Protests to respondent.

Thereafter, petitioner filed its Position Paper on 4 February 2014.

Considering that petitioner was not able to receive a decision from respondent within thirty (30) days from his receipt of the case records or until 27 February 2014, it filed the instant Petition for Review on 28 March 2014.

Meanwhile, on 1 April 2014, respondent issued a Decision (hereinafter referred to as the "COC Decision"), affirming the DC Decision, which was received by petitioner on 7 April 2014.

This caused petitioner to file a Supplemental Petition for Review before this Court on 15 April 2014.

Respondent filed his Answer on 5 June 2014, which was within the extended period granted by the Court. He also submitted the BOC records pertaining to the instant case on 16 June 2014. On 9 July 2014, petitioner filed its Reply to respondent's Answer reiterating that the Commissioner of Internal Revenue ("CIR") has no authority to interpret the provisions of the Philippine Mining Act and that the COC erred in relying on the interpretations of the CIR.

Petitioner and respondent filed their respective Pre-Trial Briefs on 22 July 2014 and 17 July 2014. Pre-trial ensued on 24 July 2014, followed by the parties' filing of their Joint Stipulation of Facts and Issues ("JSFI") on 4 August 2014. On 3 September 2014, the Court issued the Pre-Trial Order, marking the commencement of Trial. Subsequently, the same was amended by the Court in its Resolution dated 10 November 2014.

During trial, petitioner presented the following witnesses:

1. Ms. Chevy F. Albo — petitioner's Director and Corporate Secretary

   She testified on the fact that petitioner entered into an FTAA with the Philippine Government. She also identified various documents, including the Certifications issued by the Mines and Geosciences Bureau ("MGB") confirming petitioner's exemption from VAT, customs duties, and fees on its importation of capital equipment. Finally, she shed light on the processes petitioner undertook to protest the collection efforts of respondent.

2. Mr. Roger R. Bisoña — petitioner's customs broker

   He testified on the facts and identified documents surrounding the release of petitioner's shipments or importations covered by the aforementioned Letter Protests.

Subsequently, petitioner filed its Offer of Exhibits on 23 January 2015. The Court admitted all pieces of evidence offered by petitioner through its Resolution dated 1 April 2015.

On 4 June 2015, respondent filed his Manifestation and Motion (In Lieu of Comment), stating that he will no longer present any witness since the case only involves questions of law.

Considering the same, the Court ordered the parties to file their respective Memoranda, which petitioner and respondent accordingly followed on 24 July 2015 and 20 July 2015, respectively.

On 21 June 2016, the Court issued a Decision (hereinafter referred to as the "Court in Division Decision") denying the instant Petition for Review for lack of merit. In it, the Court agreed with the argument of petitioner that an FTAA contractor is exempt from payment of VAT and customs fees on importation of capital equipment during the Recovery Period. However, it also found that petitioner was not able to present sufficient evidence to prove that the contended charges in this case were imposed and paid by petitioner during the Recovery Period.

This prompted petitioner to file its Motion for Partial Reconsideration on 20 July 2016, which was denied by the Court through its Resolution, dated 20 February 2017 (hereinafter referred to as "Court in Division Resolution").

Undeterred, petitioner appealed the Court in Division Decision and Court in Division Resolution with the CTA *En Banc*.

In its appeal, petitioner presented its Declaration of Commencement of Commercial Operations, duly filed with the MGB and Department of Environment and Natural Resources ("DENR") on 16 September 2016, or after the promulgation of the Court in Division Decision.

Giving weight to the Declaration of Commencement of Commercial Operations, and considering it as newly discovered evidence, the CTA *En Banc*, on 14 August 2018, rendered its Decision, granting petitioner's appeal and remanding the case to this Court for further proceedings.

The CTA *En Banc* ruled that, during the time of the importations of the subject capital equipment, the "commencement of commercial production" period had not even begun. This is proven by the fact that the subject importations were made three (3) years before the Declaration of Commencement of Commercial Operations was submitted to the MGB and DENR. The relevant portion of the Decision is quoted, to wit:

> "In the case of FCF, its Declaration of Mining Project Feasibility (DMPF) was approved on October 18, 2011. The shipments that were erroneously subjected to VAT were made in 2013. It was only on September 9, 2016 or five (5) years after the DMPF and three (3) years after the shipments, that the DCCO was filed by FCF. To emphasize, the taxability of the imported goods will only be after the recovery period of FCF, i.e., five (5) years or at a date when the aggregate of the net cash flows from the mining operations is equal to the aggregate of its pre-operating expenses, reckoned from the date of commencement of commercial production, whichever comes first.
>
> In fact, September 9, 2016 does not even start the recovery period for FCF as this was only the filing of the DCCO and not yet approved by the Regional Office, which starts the counting of the recovery period. Thus, Section 2.1 (m) of FCF's FTAA defines the "date of commencement of commercial production" as follows:
>
> > (m). "Date of Commencement of Commercial Production" or "Commencement of Commercial Production" refers to the date of written declaration by the Contractor to start commercial operations after the conduct of Test Run including Debugging, and its

> approval by the Regional Office concerned."
>
> Obviously, the period for the Government Share, i.e., taxes, to be correctly collected has not yet begun.
>
> The capital equipment being a pre-operating expense is also of no moment as the rule on the aggregate of the net cash flows from the mining operations being equal to the aggregate of the pre-operating expenses must still reckon from the date of commencement of commercial production, which has not yet begun. The Third Division found the necessity of determining the amount of pre-operating expenses in order to ascertain the date when the recovery period would end to start the collection of government shares. Such determination is already futile as it is already proven by FCF that its date of Commencement of Commercial Production would only start upon approval of its DCCO which was only filed on September 9, 2016. Thus, the computation of net cash flow and pre-operating expenses as being insisted by the COC is actually immaterial. It is only upon presentation of the filing of the DCCO that this Court was able to reckon, at the very earliest, the said recovery period. Logic then dictates that the collection of VAT and fees before the recovery period should not occur.

On account of the CTA *En Banc* Decision, this Court reopened trial for the presentation of petitioner's additional pieces of evidence.

Accordingly, petitioner presented the following additional witnesses:

1. Mr. Tommy E. Alfonso — petitioner's Financial Comptroller

   He testified that petitioner is exempt from VAT on imported goods and services and customs duties and fees on importations of capital equipment from the date of approval of its Declaration of Mining Project Feasibility on 18 October 2011 up to the end of its Recovery Period; that petitioner was still in its pre-operating phase when it made the subject importations; and that its Declaration of Commencement of Commercial Operations was submitted to MGB and DENR and subsequently approved by MGB on 17 July 2017. He also identified documents relevant to his testimony.

2. Mr. Roel D. Bahiwag — petitioner's Accounting Manager

He testified that the imported capital equipment are still currently being used in the Runruno Gold Molybdenum Project. He also identified pieces of evidence relevant to his testimony.

Thereafter, petitioner filed its Offer of Exhibits on 18 November 2019. The exhibits were all admitted by the Court through its Resolution, dated 22 January 2020.

The parties filed their respective Memoranda on 21 February 2020 for respondent and 9 March 2020 for petitioner.[12]

...

On 15 March 2021, the Third Division promulgated the assailed Amended Decision.[13] The dispositive portion thereof reads:

...

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

SO ORDERED.

...

The Third Division's denial resulted from petitioner's failure to comply with all the requisites for a value-added tax (**VAT**) exemption on its importation of capital equipment, particularly the requirement that there must not be such equipment of similar price and quality available domestically to that imported pursuant to Section XIII, Paragraph 13.2(j)[14] of the Financial and Technical Assistance Agreement[15] (**FTAA**).

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12 Division Docket, Volume VI, pp. 2699-2705; Citations, emphasis, italics and underscoring omitted.

13 Supra at note 2.

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SECTION XIII
RIGHTS AND OBLIGATIONS OF THE PARTIES

13.2 Rights of the Contractor. The Contractor shall have the following rights:

...

j. Subject to existing laws, rules and regulations, the Contractor shall have the right to import into the Philippines all equipment, machinery and spare parts required by Contractor for Mining Operations, and to export the same when no longer needed for Mining Operations: *Provided, That* machinery, equipment and spare parts of comparable price and quality are not manufactured domestically, are actually needed and will be used exclusively by the Contractor in its Mining Operations, and are covered by shipping documents in the name of the Contractor to whom the shipment will be delivered direct by the customs authorities.

...

15 Exhibit "P-12" to "P-12-A", Division Docket, Volume III, pp. 1332-1448.

Aggrieved, petitioner filed a Motion for Reconsideration[16] (**MR**) on 24 May 2021, to which respondent filed his or her Comment[17] on 18 June 2021.

On 20 October 2021, the Third Division promulgated the assailed Resolution[18] denying petitioner's MR essentially restating in the ratio of the assailed Amended Decision.

Unsatisfied, petitioner filed the instant petition[19] contesting the assailed Amended Decision and Resolution.

On 21 March 2022, petitioner filed a Motion for Time[20] requesting for additional period of seven (7) days, or until 28 March 2022, within which to submit the certified true copies of the documents attached to the instant petition as Annexes "C"[21], "G"[22], "H"[23], "I"[24] and "J".[25] In its 02 May 2022 Resolution[26], the Court *En Banc* noted petitioner's Submission filed on 28 March 2022 wherein the certified true copies of the aforementioned annexes have been attached.

On 30 May 2022, respondent filed his or her Comment[27] to the instant petition while petitioner filed a Reply[28] on 10 June 2022. In its 30 August 2022 Resolution[29], the Court *En Banc* admitted respondent's belated Comment and expunged from the records petitioner's Reply since the same is a prohibited pleading. In the same Resolution, the Court *En Banc* submitted the case for decision.

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16 Id., Volume VI, pp. 2720-2727.
17 Id., pp. 2733-2758.
18 Supra at note 3.
19 Supra at note 1.
20 *Rollo*, Volume III, pp. 2031-2033.
21 Copy of petitioner's Motion for Reconsideration in CTA Case No. 8789.
22 Copy of petitioner's Petition for Review before the Court *En Banc* in CTA EB No. 1620.
23 Decision of the Court *En Banc* in CTA EB No. 1620 dated 14 August 2018.
24 Offer of Exhibits before the Court *En Banc* in CTA EB No. 1620.
25 Resolution dated 22 January 2020 in CTA Case No. 8789.
26 *Rollo*, Volume III, pp. 2039-2040.
27 Id., pp. 2041-2089.
28 Id., pp. 2094-2102.
29 Id., pp. 2111-2112.

ISSUE

In the instant petition, petitioner submits the sole issue of –

> WHETHER PETITIONER FCF MINERALS CORPORATION IS REQUIRED TO PROVE THE NON-AVAILABILITY OF THE EQUIPMENT LOCALLY IN ORDER TO BE ENTITLED TO REFUND OF VALUE-ADDED TAX (VAT) AND FEES FROM VARIOUS IMPORTATIONS OF CAPITAL EQUIPMENT AMOUNTING TO ₱57,896,506.00.

ARGUMENTS

In support of the present petition, petitioner argues that it is entitled to the refund of VAT and fees amounting to ₱57,896,506.00 without need of proving the non-availability of the imported equipment locally. According to petitioner, it is clear from the language of FTAA No. 04-2009-11, dated 19 September 2009[30], that the basic government share in the form of taxes is collectible only after the Recovery Period. Since it was able to establish that the subject importations were made before the said period, the same is already sufficient to entitle it to the refund of VAT and other fees.

Specifically, as the Recovery Period is reckoned from the date of commencement of commercial production which, in this case, is considered to have begun on 17 July 2017 (when Mines and Geosciences Bureau [**MGB**] Regional Office finally approved petitioner's Declaration), its importations in 2013 were still then in the pre-operating stage and definitely before the Recovery Period.

Petitioner further contends that the condition that the imported machinery, equipment and spare parts of comparable price and quantity are not manufactured domestically as provided in paragraph 13.2(j)[31], the Third Division did not impose Section XIII of the FTAA in its original Decision dated 21 June 2016.[32] Thus, petitioner did not expect that, in addition to the requirement of proving that the importations were made during its pre-operation stage, it will also have to prove the condition

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30 Exhibits "P-12" to "P-12-A", supra at note 15.
31 Supra at note 14.
32 Division Docket, Volume IV, pp. 1646-1668.

that the machinery, equipment and spare parts of comparable price and quantity are not manufactured domestically.

Furthermore, petitioner insists that there is nothing in paragraph 13.2(j), Section XIII of the FTAA that disallows a contractor from availing of exemption from VAT and fees in event that it fails to prove that such imported items are not manufactured domestically.

At any rate, petitioner maintains that the Certification[33] of Tsuyoshi Isogami (**Isogami**) proving such condition was properly notarized although, admittedly, the copy submitted to the Court was blurry.

On the other hand, respondent claims that the Third Division did not err in denying petitioner's claim for refund for its failure to prove compliance with the provisions of the FTAA, contrary to petitioner's supposition that its importations of capital equipment made during the Recovery Period is the sole condition for its entitlement to exemption from payment of VAT and other fees.

Moreover, a careful reading of the FTAA reveals that petitioner's entitlement to exemption from VAT and fees on its capital equipment is inherently confined to its right to import such capital equipment. In other words, petitioner is required to meet the conditions laid down by the FTAA on its right to import the subject capital equipment before it could even claim entitlement to exemption from payment of VAT and fees due thereon.

According to respondent, petitioner's pieces of evidence do not prove compliance with the requirements under paragraph 13.2(j)[34], Section XIII of the FTAA. Aside from failing to show that the imported capital equipment is not manufactured domestically and is actually needed and used exclusively for petitioner's mining operations, it likewise failed to prove that the same has not yet been sold, transferred or disposed within the prescribed period.

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33 Exhibit "P-45", id., Volume V, p. 2419.
34 Supra at note 14.

With respect to the condition that the imported capital equipment is not available domestically in comparable price and quality, respondent argues that petitioner only presented the Certification from Maxima Machineries Incorporated dated 02 October 2019, as executed by Isogami. However, the said Certification carries no probative value since, aside from being blurry as stated earlier, it was not notarized and not duly authenticated.

In addition, respondent contends that the said Certification does not prove that the capital equipment mentioned therein is the very same capital equipment that petitioner had imported. Particularly, the capital equipment listed in the said Certification did not include one (1) unit of 3T Forklift, one (1) unit of 5T Forklift, and two (2) spare parts covered by the Bill of Lading and Import Entry and Internal Revenue Declaration (**IEIRD**) presented by petitioner.

Respondent further contradicts petitioner's claim that it did not expect that it would also have to prove the condition under paragraph 13.2(j), Section XIII of the FTAA that the machinery, equipment and spare parts of comparable price and quantity are not manufactured domestically to support its claim for refund of VAT and other fees. According to respondent, when the case was reopened, petitioner itself voluntarily presented evidence proving that its capital equipment is allegedly not available domestically in comparable price and quality. The testimonies of its additional witnesses as well as its Offer of Exhibits show that petitioner did not confine its presentation of additional evidence to prove that its importations of capital equipment took place during or before the Recovery Period of the FTAA. On the contrary, petitioner voluntarily submitted evidence to establish it supposed compliance with the conditions provided under paragraph 13.2(j), Section XIII of the FTAA.

Having thus voluntarily presented additional evidence to prove the foregoing, respondent contends that petitioner cannot thereafter impute error on the Third Division's part in resolving its claim for refund based on such additional evidence.

RULING OF THE COURT *EN BANC*

After a careful consideration of the arguments raised by the parties *vis-à-vis* the pertinent laws, rules and jurisprudence, the Court *En Banc* finds no merit in the instant petition.

The crux of the present controversy lies on whether petitioner is indeed required to comply with paragraph 13.2(j), Section XIII of the FTAA, particularly, on the requirement that the machinery, equipment and spare parts of comparable price and quality are not manufactured domestically.

According to petitioner, nothing in the said provision disallows a contractor from availing of exemption from VAT and fees in the event that it fails to prove that such imported items are not manufactured domestically. Respondent debunks petitioner's argument that its entitlement to exemption from VAT and fees on its capital equipment (pursuant to the FTAA) is inherently confined by the right to import such capital equipment.

We agree with respondent.

Paragraph 13.2(j), Section XIII of the FTAA reads as follows:

...

SECTION XIII
RIGHTS AND OBLIGATIONS OF THE PARTIES

13.2 Rights of the Contractor. The Contractor shall have the following rights:

...

j. Subject to existing laws, rules and regulations, the Contractor shall have the right to import into the Philippines all equipment, machinery and spare parts required by Contractor for Mining Operations, and to export the same when no longer needed for Mining Operations: *Provided,* That machinery, equipment and spare parts of comparable price and quality are not manufactured domestically, are actually needed and will be used exclusively by the Contractor in its Mining Operations, and are covered by shipping documents in the name of the

Contractor to whom the shipment will be delivered direct by the customs authorities.

From the date of approval of the Declaration of Mining Project Feasibility until the end of Recovery Period and/or within a period of five (5) years from the date of acquisition of such machinery, equipment and spare parts, the Contractor may not sell, transfer, or dispose of such machinery, equipment and spare parts within the Philippines without the prior approval of the Director and payment of any taxes due the Government that were previously exempted: *Provided,* That should the Contractor sell, transfer or dispose of such machinery, equipment and spare parts within the Philippines without the prior consent of the Director within the prescribed period, it shall pay twice the amount of the tax exemption granted: *Provided further,* That the Director may allow the sale, transfer, or disposition of the said items within the Philippines within the prescribed period without payment of previously granted tax and duty exemptions under terms and conditions to be formulated by the Bureau: *Provided finally,* That any sale, transfer or disposition made after the prescribed period shall not require prior approval of the Director but notice thereof shall be made within ten (10) days from the sale, transfer or disposition thereof.[35]

...

From the foregoing, the Third Division correctly enumerated the requisites before the imported capital equipment could be exempt from VAT and customs fees:

1. The importation of the capital equipment should have taken place during or before the Recovery Period;

2. The capital equipment is not available domestically in comparable price and quality;

3. The capital equipment is actually needed and will be used exclusively by the FTAA Contractor in its Mining Operations;

4. The importation of capital equipment should be covered by shipping documents in the name of the FTAA Contractor to whom the shipment will be delivered directly by the customs authorities; and,

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35 Emphasis supplied.

5. The capital equipment was not sold, transferred or disposed from the date of approval of the Declaration of Mining Project Feasibility until the end of Recovery Period and/or within a period of five (5) years from the date of acquisition of such capital equipment, subject to exceptions under the FTAA.

While it is true that the aforementioned provisions do not explicitly provide that non-compliance therewith would disallow the contractor from availing of the VAT and customs fees exemptions, respondent is correct in his or her observation that such compliance is inherently confined by its right to import such capital equipment pursuant to the FTAA provisions.

To elaborate, herein petitioner, as contractor, has the right to import the subject capital equipment subject to the conditions set forth in the said provision. Conversely, petitioner has no right to import capital equipment (under the FTAA provisions) if all of the aforementioned requisites are not complied with. Tersely put, petitioner has no right and thus cannot avail itself of the benefits provided in the FTAA if at least one of the aforementioned requisites is not complied with.

Verily, there is no merit in petitioner's contention that its non-compliance with the paragraph 13.2(j), Section XIII of the FTAA should not result into disallowance of its VAT and customs fees exemption.

The next pivotal question is whether petitioner was able to comply with the aforementioned requisites to be able to successfully claim for the refund of VAT and customs fees it paid relative to the subject importation.

To prove its compliance, petitioner submitted, among others, Isogami's Certification dated 02 October 2019[36] which reads as follows:

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[36] Supra at note 33.

...

2. The following capital equipment which were imported by FCF Minerals Corporation were not locally manufactured nor produced and as such were unavailable in the Philippines:

Description	Import Entry No.	Date of Entry	Purchase Order (PO) No.	PO Date
6 Units Komatsu HD785-7 Dump Trucks	C48170	April 18, 2013	1226	July 31, 2012
1 Unit Komatsu PC2000-8 Hydraulic Excavator	C44534	April 18, 2013	1226	July 31, 2012
1 Unit Komatsu PC1250-8 Hydraulic Excavator	C44535	April 18, 2013	1330	September 3, 2012
1 Unit Komatsu GD825A-2 Motor Grader	C44535	April 18, 2013	1330	September 3, 2012
2 Units Komatsu D475A-A Bulldozer	C44535	April 18, 2013	1330	September 3, 2012

3. POs for the above equipment with nos. 1226 and 1330 were received by Maxima, being the exclusive distributor of Komatsu equipment in the Philippines, but were referred to Marubeni Corporation, a Japanese trading firm, conducting import and export of Komatsu equipment in Japan, where the above equipment were imported from as the capital equipment covered by the POs were not being locally manufactured nor produced and as such were unavailable in the Philippines.[37]

...

A careful reading of the said Certification reveals that the same does not attest that the listed capital equipment imported is not available domestically in comparable price and quality. At best, the same merely demonstrate the fact that **Komatsu brand** of the said capital equipment are the ones not available domestically in comparable price and quality.

[37] Underscoring supplied.

We quote with approval the Third Division's finding, *viz*:

> What is on record is that petitioner did not even exhaust efforts in determining whether the imported capital equipment was domestically available in comparable price and quality. In fact, it is evident in the testimony of petitioner's witness that it only approached Maxima Machineries, Incorporated for the purchase of the said equipment. The relevant testimony is quoted to wit:
>
> "Justice Liban:
>
> Are you saying that there are no domestic corporation manufacturing these equipment?
>
> Mr. Alfonso:
>
> None, your Honors, particularly with the mining equipment, the dump trucks, excavators and bulldozers, **we actually approached one of the suppliers here, namely: Komatsu, Maxima.** They are the licensed distributors in the Philippines and they are the ones who asked us, who approached the Japanese counterpart because its not available here."
>
> Again, petitioner's evidence on this score is limited to one particular brand supplier and does not reflect the absence of domestic manufacturers, as required.[38]

From the above, it is evident that petitioner failed to prove the requirement that the capital equipment imported is not available domestically in comparable price and quality so as to entitle it to VAT and customs fees exemption under the FTAA.

With the foregoing disquisition, We see no error in the Third Division's ruling that petitioner is not entitled to the refund sought. As petitioner failed to prove one of the essential requisites for entitlement to import capital equipment free of VAT and customs fees, the Court *En Banc* finds it unnecessary to tackle the other conditions required as their resolution could no longer change the outcome of the case.

On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi*

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[38] Supra at note 2, pp. 2714-2715; Emphasis supplied.

juris against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[39]

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner FCF Minerals Corporation on 10 January 2022 is hereby **DENIED** for lack of merit. Consequently, the assailed Amended Decision dated 15 March 2021 and assailed Resolution dated 20 October 2021 of the Third Division, in CTA Case No. 8789, entitled *FCF Minerals Corporation v. Commissioner of Customs*, are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[39] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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