REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8819

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAY 20 2016
2:15 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

In the instant Petition for Review filed on May 15, 2014, Philex Mining Corporation seeks the refund of the amounts of ₱43,969,988.40 and ₱42,125,610.72, or a total of ₱86,095,599.12, allegedly representing its excess and unutilized input value-added tax (VAT) for the second (2nd) and third (3rd) quarters of calendar year (CY) 2012.

FACTS

Petitioner Philex Mining Corporation is a domestic corporation organized under Philippine laws, with principal office at 27 Brixton St., Pasig City.[1] It is engaged in the mining business, which includes the exploration, development, and operation of mining properties for commercial production, and the marketing of mine products, consisting of gold bullion and copper ore concentrates.[2] Petitioner is a VAT-registered

[1] Par. 1, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), docket, p. 128.
[2] Par. 3, Summary of Facts Admitted, SFI, docket, p. 129.

taxpayer with Taxpayer's Identification No. 000-283-731-000, as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN8RC0000041684.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 11, 2004, petitioner executed a Long Term Gold and Copper Concentrates Sales Agreement[4] with Pan Pacific Copper Co., Ltd. of Tokyo, Japan for the sale by petitioner to Pan Pacific Copper Co., Ltd. of copper concentrates. On August 16, 2007, petitioner entered into a similar contract[5] with Louis Dreyfus Commodities Metals Suisse SA of Switzerland for the sale and purchase of copper concentrates from petitioner.

Petitioner filed its Quarterly VAT Returns for the 2nd and 3rd quarters of 2012 on the following dates:

QUARTERLY RETURN	REQUIRED FILING DATE[6]	DATE OF ACTUAL FILING
2nd Quarter[7]	July 25, 2012	July 18, 2012 (original)
		September 25, 2013 (amended)
3rd Quarter[8]	October 25, 2012	October 19, 2012 (original)
		September 25, 2013 (amended)

On December 17, 2013, petitioner filed an administrative claim for refund or tax credit[9] with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF-OSS") for its alleged excess and unutilized input VAT for the 2nd and 3rd quarters of 2012, in

[3] Exhibits "P-16-i" and "P-16-j".
[4] Exhibit "P-4".
[5] Exhibit "P-18".
[6] SEC. 114. *Return and Payment of Value-added Tax.* -
(A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer; *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.
[7] Exhibits "P-16-a" and "P-16-b".
[8] Exhibits "P-16-c" and "P-16-d".
[9] Exhibits "P-2", "P-2-a", "P-2-b", "P-2-c", "P-3", "P-3-a", and "P-3-b".

the respective amounts of ₱43,969,988.40 and ₱42,125,610.72.

Due to the inaction of respondent on petitioner's administrative claim for refund, petitioner filed the present Petition for Review before this Court on May 15, 2014.

In her Answer[10] filed on July 4, 2014, respondent alleged that a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. Respondent argued that in order to validly claim for tax credit or refund, it is imperative for petitioner to prove its compliance with the following:

a. The registration requirements of a value-added taxpayer under the pertinent provision of the NIRC of 1997, as amended, and its implementing revenue regulations;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the NIRC of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);

c. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112(C) of the NIRC of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund, which is a condition *sine qua non* prior to the filing of the such claim;

d. That the input taxes of ₱43,739,035.58 allegedly representing petitioner's excess and unutilized input VAT from its purchases of goods and services from VAT-registered suppliers were:

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[10] Docket, pp. 45 to 49.

1. paid by the petitioner;
2. attributable to its zero-rated or effectively zero-rated sales; and
3. such paid input taxes should not have been applied against any output tax.

e. That petitioner's claim for tax credit/refund allegedly representing petitioner's excess and unutilized input VAT in the amount of ₱43,739,035.58 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) of the NIRC of 1997, as amended.

Furthermore, respondent insisted that to be considered an export sale for purposes of the application of the zero percent (0%) VAT rate, there must be an actual shipment of goods from the Philippines to a foreign country, which must be made also in the quarter when the sale was made. Moreover, respondent claimed that petitioner's assertion that its zero-rated export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP) cannot be accorded weight because plain allegations without any evidentiary documents will not justify the granting of petitioner's application for tax refund.

Respondent filed her Pre-Trial Brief[11] on September 22, 2014; while the Pre-Trial Brief for Petitioner[12] was filed on October 7, 2014.

As directed by the Court,[13] the parties jointly submitted a Stipulation of Facts and Issues[14] on November 7, 2014; which the Court adopted in the Pre-Trial Order[15] promulgated on November 14, 2014.

During trial, petitioner presented Ms. Sylvia P. Delos Santos, petitioner's Accounting Manager, and Atty. Conrado M. Briones, the Court-commissioned Independent Certified Public Accountant (CPA), as witnesses.[16]

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[11] Docket, pp. 107 to 108.
[12] Docket, pp. 115 to 120.
[13] Minutes of the Pre-Trial Conference, November 6, 2014, docket, pp. 125.
[14] Docket, pp. 128 to 132.
[15] Docket, pp. 134 to 137.
[16] Minutes of the Hearing, January 21, 2015, docket, p. 147.

Petitioner likewise formally offered its documentary evidence[17] on February 5, 2015. The Court admitted Exhibits "P-1" to "P-12", "P-14", and "P-16" to "P-18-a", inclusive of sub-markings, as petitioner's evidence in the Resolution[18] dated March 27, 2015.

On the other hand, during the hearing held on June 1, 2015, respondent manifested, through her counsel, that she will no longer present any witness.[19]

As directed by the Court, the Memorandum for the Petitioner[20] was filed on June 11, 2015; while respondent failed to file her memorandum despite due notice.[21]

Thereafter, the instant case was submitted for decision on July 24, 2015.[22]

ISSUE

The parties submitted the following issue for this Court's resolution:

> "Whether or not petitioner is entitled to the refund of its alleged excess and unutilized input tax in the amounts of ₱43,969,988.40 and ₱42,125,610.72 for the 2nd and 3rd quarters of 2012, or the total amount of ₱86,095,599.12 for both taxable quarters."[23]

DISCUSSION/RULING

Petitioner bases its claim for refund on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

[17] Formal Offer of Evidence, docket, pp. 149 to 153.
[18] Docket, pp. 156 to 157.
[19] Resolution, June 1, 2015, docket, pp. 162 to 163.
[20] Docket, pp. 164 to 180.
[21] Records Verification dated July 22, 2015, docket, p. 184.
[22] Resolution, docket, p. 185.
[23] Statement of the Issue, Stipulation of Facts and Issues, docket, p. 129.

"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 or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

From the foregoing provision, the refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales is subject to the taxpayer's compliance with the following requisites:

1. there must be zero-rated or effectively zero-rated sales;
2. input taxes were incurred or paid;
3. such input taxes were attributable to zero-rated or effectively zero-rated sales;
4. the input taxes were not applied against any output VAT liability; and
5. the claim for refund was filed within the two-year prescriptive period.

This Court finds it appropriate to determine first petitioner's compliance with the fifth requisite pertaining to the timeliness of the filing of the instant claim, since it will determine the necessity of resolving petitioner's compliance with the other requisites.

As categorically stated under Section 112(A) of the NIRC of 1997, as amended, the application for tax credit or refund must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the second and third quarters of CY 2012, which closed on June 30, 2012 and September 30, 2012, respectively. Counting two years from these dates, petitioner had until June 30, 2014 and September 30, 2014 within which to file its administrative claim for refund.

Thus, petitioner's administrative claim for refund filed on December 17, 2013 with the DOF-OSS under Claimant Information Sheet Nos. 68011[24] and 68013[25], together with the claim stubs[26] and letter to the DOF-OSS[27] for the refund of the amounts of ₱43,969,988.40 and ₱42,125,610.72, respectively, are well within the two-year prescriptive period provided under Section 112(A) of the NIRC of 1997, as amended.

As to the timeliness of petitioner's judicial appeal, the pertinent provision is Section 112(C) of the NIRC of 1997, as amended, which states:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim

[24] Exhibit "P-2".
[25] Exhibit "P-3".
[26] Exhibits "P-2-a" and "P-3-a".
[27] Exhibits "P-2-b" and "P-3-b".

or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing, the respondent has 120 days from the date of submission of complete documents in support of the application for refund or tax credit to grant or deny the claim. In case of full or partial denial by respondent, the taxpayer's recourse is to file an appeal before this Court within thirty (30) days from receipt of the decision of the respondent. However, if after the 120-day period respondent fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of respondent to this Court within 30 days.

Applying Section 112(C) of the NIRC of 1997, as amended, the following are the pertinent dates to petitioner's claim for refund:

CY 2012	Date of Filing of the Administrative Claim and submission of documents	End of 120 days for the BIR Commissioner to decide on the claim	End of 30 days from the expiration of the 120-day period	Date of Filing of the Judicial Claim
2nd Quarter 3rd Quarter	December 17, 2013	April 16, 2014	May 16, 2014	May 15, 2014

Clearly, petitioner's appeal, by way of a Petition for Review on May 15, 2014, was filed well within the period prescribed by law.

The Court shall now proceed to determine petitioner's compliance with the remaining requisites provided under Section 112(A) of the NIRC of 1997, as amended.

Anent the first requisite, petitioner duly filed with the BIR its amended Quarterly VAT Returns for the 2nd and 3rd quarters of CY 2012, declaring the following:

	2nd Quarter (Exhibit "P-16-b")	3rd Quarter (Exhibit "P-16-d")
Vatable Sales/Receipt	₱ 4,772,880.90	₱ 14,013,470.50
Zero-Rated Sales/Receipts	3,876,914,133.26	2,104,425,514.73
Total Sales/Receipts	3,881,687,014.16	2,118,438,985.23

Output Tax Due	572,745.71	1,681,616.46
Less: Allowable Input Tax		
Input Tax Carried Over from Previous Quarter	218,834,784.03	222,603,106.73
Current Transactions		
Importations of Goods Other than Capital Goods	39,531,975.00	35,412,111.00
Domestic Purchase of Services	5,010,759.11	8,395,116.18
Total Available Input Tax	263,377,518.14	266,410,333.91
Less: Refund/TCC	40,201,665.70	-
Allowable Input Tax	223,175,852.44	266,410,333.91
Overpayment	**₱222,603,106.73**	**₱264,728,717.45**

The Court-commissioned Independent CPA, Mr. Conrado M. Briones, noted in his Report[28] dated December 5, 2014 that petitioner's zero-rated sales for the second and third quarters of CY 2012 in the amounts of ₱3,876,914,133.26 and ₱2,104,425,514.73 have corresponding US dollar value of $90,976,358.00 and $50,157,377.00, respectively, consisting of the following:

	2nd Quarter	**3rd Quarter**	**Total**
Provisional billings for direct export sales of copper			
Pan Pacific Copper Co., Ltd.	$ 48,311,005.00	$ 51,338,098.00	$ 99,649,103.00
Louis Dreyfus Commodities Metals Suisse SA	45,755,375.00	-	45,755,375.00
Sub-total	*94,066,380.00*	*51,338,098.00*	*145,404,478.00*
Adjustment to previous quarters' provisional billings			
Pan Pacific Copper Co., Ltd.	(1,748,577.00)	116,894.00	(1,631,683.00)
Louis Dreyfus Commodities Metals Suisse SA	(1,341,445.00)	(1,297,615.00)	(2,639,060.00)
Sub-total	*(3,090,022.00)*	*(1,180,721.00)*	*(4,270,743.00)*
Total	**$90,976,358.00**	**$50,157,377.00**	**$141,133,735.00**

Petitioner claims that the shipments and sales of its mineral products to Pan Pacific Copper, Co., Ltd. of Tokyo, Japan and to Louis Dreyfus Commodities Metals Suisse SA of Switzerland are zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

"SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* –

xxx xxx xxx

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[28] Exhibit "P-6".

(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);"

Based on the above-quoted provision, in order for an export sale to qualify as zero-rated, the following conditions must be present:

1. there was sale and actual shipment of goods from the Philippines to a foreign country;
2. the sale was made by a VAT-registered person;
3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary thereto, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, prescribe that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties issue a VAT invoice containing the following information:

"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

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

xxx xxx xxx

(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;" *(Emphasis supplied)*

"SEC. 4.113-1. ***Invoicing Requirements.*** –

(A) **A VAT-registered person shall issue:** –

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt.' All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(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:

xxx xxx xxx

(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;" *(Emphasis supplied)*

In addition to the above-stated requirements, the invoice or receipt must be duly registered with the BIR as prescribed under Sections 237 and 238 of the NIRC of 1997, as amended, *to wit*:

"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 **sales** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx" *(Emphasis supplied)*

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1. sales invoice as proof of sale of goods;
2. export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Further, the sales invoices supporting the export sales must be registered with the BIR and must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

As noted earlier, petitioner is a VAT-registered entity as evidenced by its BIR Certificate of Registration and VAT Registration Certificate[29].

Pursuant to petitioner's contracts with Pan Pacific Copper Co., Ltd.[30] and Louise Dreyfus Commodities Metals Suisse SA[31], petitioner sold and shipped mineral products for the second and third quarters of calendar year 2012, as evidenced by Export Declarations[32], Bills of Lading[33], Provisional Invoices[34], and Final Invoices[35]. The Bills of Lading specifically indicate the foreign countries where the ports of discharge of its mineral products were located.

It must be noted that the Final Invoices submitted by petitioner bear dates much later than the dates of shipment indicated in the Bills of Lading and Provisional Invoices. Petitioner, however, explains the reason for the much later dates of the Final Invoice through the Consolidated Judicial

[29] Exhibits "P-16-i" and "P-16-j".
[30] Long Term Gold and Copper Concentrates Sales Agreement, Exhibit "P-4".
[31] Contract No. P-100.00081, Exhibit "P-18".
[32] Exhibits "P-7-a" to "P-7-o".
[33] Exhibits "P-7-p" to "P-7-dd".
[34] Exhibits "P-7-ee" to "P-7-ss".
[35] Exhibits "P-7-tt" to "P-7-hhh".

Affidavit[36] of Ms. Sylvia P. Delos Santos, the Accounting Manager of petitioner, *to wit*:

> "Q. No. 24. – Please explain why for each shipment of mineral products to its foreign buyers Petitioner issues two invoices to the buyer, namely, a provisional invoice and a final invoice, and why the final invoice is issued much later than the date of shipment.
>
> A. No. 24. – Clause 9 of the Agreement requires the Buyer to pay the Seller the price of each shipment of copper concentrates in two stages: **First**, a **provisional payment** at the time of shipment equal to 90% of the provisional price as determined by the Seller based on shipped weight and the Seller's provisional assay, and, **Second**, a **final payment** covering the balance of the concentrate value (after deducting the 90% provisional payment from the final concentrate value) upon presentation of the final invoice after all data necessary to determine the final settlement (including weights and moisture content, final assays for copper, gold, silver contents and impurities [which are done in Buyer's smelting/refining plant at the port of discharge], and final prices for payable copper, payable gold, and payable silver) are available.
>
> On the basis of the above manner of payment, Petitioner, as Seller, issued Provisional Invoices to the Buyer at the time of each shipment of copper concentrates during the quarter in question covering the 90% provisional payments. After all the data necessary to determine the final settlement (such as weight, moisture, final assays and final prices) are available, Petitioner issued to the Buyer the Final Invoices reflecting the Final Concentrate Value and the Final Balance Due Philex (after deducting the 90% provisional payment). The payments received by Petitioner under the Final Invoices are only the final balances since the bulk of the payments were already received as 90% provisional payments under the provisional invoices issued at the time of each shipment.
>
> The period and procedure of weighing, sampling, moisture determination and assaying of each copper concentrate shipment are provided for in Clause 10 of the Long Term Sales Agreement. In Clause 10.1, it is provided that all weighing, sampling, sample preparation and determination of moisture content shall be made by receiving smelter after receipt of the concentrates. Clause 10.4 provides that from the samples taken, assay for copper, gold and silver shall be made independently by the respective assayers of Seller and Buyer, and the parties shall exchange

[36] Exhibit "P-1".

the result of the assays simultaneously on a lot by lot basis within forty (40) days from the date samples have been made available.

Clause 10.5 further provides that if there is a difference between Seller and Buyer assays for any lot, the parties shall submit such lot for settlement by **umpire** assay. The umpire is selected in rotation from a designated list.

It is the above intricate and long procedure provided in Clause 10, for weighing, sampling, sample preparation, determination of moisture content, independent assaying by the respective assays of Seller and Buyer, designation of and referral to an independent umpire for settlement of the difference between Seller and Buyer assays, to arrive at the price of final concentrate value, that accounts for the lag or delay in the issuance by Petitioner of the Final Invoices, because a Final Invoice cannot be issued until after a final settlement as to weight, moisture content, assay, and price is arrived at."

In other words, the shipment date indicated in the Bill of Lading is considered as the date of the transaction, and since the Bills of Lading were all dated within the second and third quarters of CY 2012, the related Final Invoices, which carry dates much later than the dates when the sales or shipments were made, are deemed valid.

Per petitioner's Schedule of Export Sales[37], zero-rated sales in the amounts of US$90,976,358.00 and US$50,157,377.00 for the second and third quarters of CY 2012 are broken down as follows:

Second Quarter of 2012							
Provisional Invoice			**90% Provisional Drawing (in US$)**	**Final Invoice**			**Amount Recorded in the General Ledger** (in US$)
Exhibit	**Invoice No.**	**Amount (in US$)**		**Exhibit**	**Invoice No.**	**Amount (in US$)**	
Current Quarter's Shipments							
P-7-ee	2640	23,755,314.16	21,379,782.74	P-7-tt	2649	22,055,979.52	23,401,072.00
P-7-ff	2641	22,294,277.55	20,064,849.79	P-7-uu	2650	20,874,985.39	22,354,303.00
P-7-gg	2643	25,181,038.17	22,662,934.35	P-7-vv	2651	23,452,490.78	24,982,836.00
P-7-hh	2646	21,961,809.63	19,765,628.67	P-7-ww	2652	22,595,463.89	23,328,169.00
		93,192,439.51	**83,873,195.55**			**88,978,919.58**	**94,066,380.00**
Catch-up Adjustments to Prior Quarter's Shipments							
P-7-ii	2631	26,582,495.03	23,924,349.33	P-7-xx	2642	25,885,793.66	(1,748,577.00)

[37] Exhibit "P-7".

P-7-jj	2632	22,143,680.12	19,929,312.11	P-7-yy	2639	23,852,921.78	572,464.00
P-7-kk	2636	25,826,294.92	23,243,665.43	P-7-zz	2645	24,795,498.98	(1,220,109.00)
P-7-ll	2637	25,364,037.74	22,827,633.96	P-7-aaa	2644	23,567,388.21	(693,801.00)
		99,916,507.81	**89,924,960.83**			**98,101,602.63**	**(3,090,023.00)**
Total		**193,108,947.32**	**173,798,156.38**			**187,080,522.21**	**90,976,357.00**[38]

Third Quarter of 2012							
Provisional Invoice			**90% Provisional Drawing (in US$)**	**Final Invoice**			**Amount Recorded in the General Ledger (in US$)**
Exhibit	**Invoice No.**	**Amount (in US$)**		**Exhibit**	**Invoice No.**	**Amount (in US$)**	
Current Quarter's Shipments							
P-7-mm	2647	22,821,431.70	20,539,288.53	P-7-bbb	2654	23,110,331.66	24,880,337.00
P-7-nn	2648	23,018,971.04	20,717,073.94	P-7-ccc	2655	24,059,618.22	26,457,761.00
		45,840,402.74	**41,256,362.47**			**47,169,949.88**	**51,338,098.00**
Catch-up Adjustments to Prior Quarter's Shipments							
P-7-oo	2637	25,364,037.74	22,827,633.96	P-7-ddd	2644	23,567,388.21	(563,341.00)
P-7-pp	2640	23,755,314.16	21,379,782.74	P-7-eee	2649	22,055,979.52	(293,164.00)
P-7-qq	2641	22,294,277.55	20,064,849.79	P-7-fff	2650	20,874,985.39	(441,109.00)
P-7-rr	2643	25,181,038.17	22,662,934.35	P-7-ggg	2651	23,452,490.78	(338,825.00)
P-7-ss	2646	21,961,809.63	19,765,628.67	P-7-hhh	2652	22,595,463.89	455,718.00
		118,556,477.25	**106,700,829.51**			**112,546,307.79**	**(1,180,721.00)**
Total		**164,396,879.99**	**147,957,191.98**			**159,716,257.67**	**50,157,377.00**

To ascertain whether the above breakdown of zero-rated sales were paid for in acceptable foreign currency and the payments were accounted for in accordance with the rules and regulations of the BSP, the Court considered petitioner's Summary of Sales and Remittances[39], as well as the Certificates of Inward Remittances issued by local banks, and the passbook pages showing the amounts credited and dates of remittances[40].

An examination of the said documents shows that ninety percent (90%) of the export sales per Provisional Invoices for the current quarter's shipments (*i.e.*, second and third quarters of CY 2012) correspond to the inward remittances received by petitioner, as shown below:

[38] Difference of ₱1.00 due to rounding off.
[39] Exhibit "P-8".
[40] Exhibits "P-8-a" to "P-8-z".

Current Quarter's Shipments (in US$)					
Provisional Invoice No.	**Final Invoice No.**	**Amount Recorded in the General Ledger**	**90% Provisional Drawing (a)**	**Actual Remittance per Bank Certificates (b)**	**Difference (a-b)**
Second Quarter of 2012					
2640	2649	23,401,072.00	21,379,782.74	21,379,782.74	-
2641	2650	22,354,303.00	20,064,849.79	20,064,849.79	-
2643	2651	24,982,836.00	22,662,934.35	22,662,926.35	8.00
2646	2652	23,328,169.00	19,765,628.67	19,765,623.67	5.00
	subtotal	**94,066,380.00**	**83,873,195.55**	**83,873,182.55**	**13.00**
Third Quarter of 2012					
2647	2654	24,880,337.00	20,539,288.53	20,539,281.06	7.47
2648	2655	26,457,761.00	20,717,073.94	20,717,073.94	-
	subtotal	**51,338,098.00**	**41,256,362.47**	**41,256,355.00**	**7.47**
Total		**145,404,478.00**	**125,129,558.02**	**125,129,537.55**	**20.47**

With regard to the Catch-up Adjustments to Prior Quarter's Shipments for the second and third quarters of 2012, the amounts in the corresponding Final Invoices after deducting the 90% provisional payments and other charges indicated in the Final Invoices match the inward remittances, except for Final Invoice No. 2652 (Provisional Invoice No. 2646) where no proof of inward remittance was presented, *to wit*:

Catch-up Adjustments to Prior Quarter's Shipments (in US$)							
Prov. Invoice No.	**Final Invoice No.**	**Amount per Final Invoice (a)**	**90% Provisional Drawing (b)**	**Additional Charges indicated in the Final Invoice (c)**	**Expected Balance to be remitted (d)= [a-b-c]**	**Remittance (e)**	**Difference (d-e)**
Second Quarter of 2012							
2631	2642	25,885,793.66	23,924,349.33	-	1,961,444.33	1,961,444.33	-
2632	2639	23,852,921.78	19,929,312.11	-	3,923,609.67	3,923,576.67	33.00
2636	2645	24,795,498.98	23,243,665.43	11,087.68	1,540,745.87	1,540,723.87	22.00
2637	2644	23,567,388.21	22,827,633.96	-	739,754.25	739,722.75	31.50
	subtotal	**98,101,602.63**	**89,924,960.83**	**11,087.68**	**8,165,554.12**	**8,165,467.62**	**86.50**
Third Quarter of 2012							
2637	2644	23,567,388.21	22,827,633.96	-	-[41]	-	-
2640	2649	22,055,979.52	21,379,782.74	9,984.21	666,212.57	666,202.57	10.00
2641	2650	20,874,985.39	20,064,849.79	-	810,135.60	810,115.60	20.00
2643	2651	23,452,490.78	22,662,934.35	-	789,556.43	789,556.43	-
2646	2652	22,595,463.89	19,765,628.67	-	2,829,835.22	-	2,829,835.22
	subtotal	**112,546,307.79**	**106,700,829.51**	**9,984.21**	**5,095,739.82**	**2,265,874.60**	**2,829,865.22**
Total		**210,647,910.42**	**196,625,790.34**	**21,071.89**	**13,261,293.94**	**10,431,342.22**	**2,829,951.72**

In sum, the amount of US$17,391,685.85 representing the difference between the export sales as recorded in the

[41] The expected balance to be remitted is shown in the second quarter of 2012.

General Ledger and the corresponding inward remittances for the 3rd and fourth (4th) quarters' shipments, shall be disallowed as zero-rated sales, as determined below:

Prov. Inv. No.	Final Inv. No.	Amount Recorded in the General Ledger (in US$) Current Quarter	After the Current Quarter (Catch-up Adjustment)	Total	Inward Remittance (in US$) Current Quarter	After the Current Quarter (Catch-up Adjustment)	Total	Difference
Current Quarter's Shipments								
Second Quarter of 2012								
2640	2649	23,401,072.00	(293,164.00)	23,107,908.00	21,379,782.74	666,202.57	22,045,985.31	1,061,922.69
2641	2650	22,354,303.00	(441,109.00)	21,913,194.00	20,064,849.79	810,115.60	20,874,965.39	1,038,228.61
2643	2651	24,982,836.00	(338,825.00)	24,644,011.00	22,662,926.35	789,556.43	23,452,482.78	1,191,528.22
2646	2652	23,328,169.00	455,718.00	23,783,887.00	19,765,623.67	-	19,765,623.67	4,018,263.33
subtotal		**94,066,380.00**	**(617,380.00)**	**93,449,000.00**	**83,873,182.55**	**2,265,874.60**	**86,139,057.15**	**7,309,942.85**
Third Quarter of 2012								
2647	2634	24,880,337.00	-	24,880,337.00	20,539,281.06	-	20,539,281.06	4,341,055.94
2648	2635	26,457,761.00	-	26,457,761.00	20,717,073.94	-	20,717,073.94	5,740,687.06
subtotal		**51,338,098.00**	-	**51,338,098.00**	**41,256,355.00**	-	**41,256,355.00**	**10,081,743.00**
Total		**145,404,478.00**	**(617,380.00)**	**144,787,098.00**	**125,129,537.55**	**2,265,874.60**	**127,395,412.15**	**17,391,685.85**
Catch-up Adjustments to Prior Quarter's Shipments								
Second Quarter of 2012								
2631	2642	(1,748,577.00)	-	(1,748,577.00)	1,961,444.33	-	1,961,444.33	-
2632	2639	572,464.00	-	572,464.00	3,923,576.67	-	3,923,576.67	-
2636	2645	(1,220,109.00)	-	(1,220,109.00)	1,540,723.87	-	1,540,723.87	-
2637	2644	(693,801.00)	(563,341.00)	(1,257,142.00)	739,722.75	-	739,722.75	-
Total		**(3,090,023.00)**	**(563,341.00)**	**(3,653,364.00)**	**8,165,467.62**	-	**8,165,467.62**	-
Grand Total		**142,314,455.00**	**(1,180,721.00)**	**141,133,734.00**	**133,295,005.17**	**2,265,874.60**	**135,560,879.77**	**17,391,685.85**

Accordingly, petitioner's export sales for the second and third quarters of CY 2012 with the net adjusted amounts of US$83,666,415.15 and US$40,075,634.00, respectively, and with peso equivalent in the respective amounts of ₱3,565,404,402.91 and ₱1,681,431,361.70 qualify for VAT zero-rating, as computed below:

	2nd Quarter	3rd Quarter	Total
Zero-rated Sales in US$	90,976,358.00	50,157,377.00	141,133,735.00
Less: Sales without proof of inward remittance in US$	7,309,942.85	10,081,743.00	17,391,685.85
Substantiated Zero-Rated Sales in US$	**83,666,415.15**	**40,075,634.00**	**123,742,049.15**
Multiply by Average Peso to Dollar Rate			
Declared zero-rated sales in Php	3,876,914,133.26	2,104,425,514.73	
Divided by zero-rated sales in US$	90,976,358.00	50,157,377.00	
Average Peso to Dollar Rate	*42.6145233606*	*41.9564506878*	
Substantiated Zero-Rated Sales in Php	**3,565,404,402.91**	**1,681,431,361.70**	**5,246,835,764.61**

After resolving that petitioner had VAT zero-rated sales for the 2nd and 3rd quarters of CY 2012 in the respective amounts of ₱3,565,404,402.91 and ₱1,681,431,361.70, the Court proceeds to the determination of whether petitioner incurred or paid input taxes in connection thereto and if said input taxes were not applied against any output VAT liability of petitioner.

Petitioner's Quarterly VAT Returns for the 2nd and 3rd quarters of CY 2012 reflected input VAT on importations of goods and on domestic purchases of services in the total amount of ₱88,349,961.29, *to wit*:

Input VAT on:	**2nd Quarter**	**3rd Quarter**	**Total**
Importations of goods other than capital goods	₱ 39,531,975.00	₱ 35,412,111.00	₱ 74,944,086.00
Domestic purchases of services	5,010,759.11	8,395,116.18	13,405,875.29
Total	**₱ 44,542,734.11**	**₱ 43,807,227.18**	**₱ 88,349,961.29**

To determine the accuracy of petitioner's declaration, the Independent CPA examined the voluminous documents of petitioner in support of its claim for refund. Based on his findings, petitioner's claim in the amount of ₱18,512,154.06, as presented below, shall be disallowed for not being properly substantiated by supporting documents, as prescribed under Sections 110(A), 113(A) and (B)(2)(a), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:

Independent CPA	**2nd Quarter**	**3rd Quarter**	**Total**
Input Taxes on Importations			
Supported by original Import Entry and Internal Revenue Declarations only without bank validation of payments			
Dated in the current quarter (*Exhibits "P-12-a" to "P-12-l"*)	₱ 913,065.00	₱ 4,150,476.00	₱ 5,063,541.00
No supporting documents presented (*Exhibit "P-13"*)	9,634,030.00	137,625.00	9,771,655.00
subtotal	**10,547,095.00**	**4,288,101.00**	**14,835,196.00**
Input Taxes on Domestic Purchases of Services			
Original VAT official receipts/invoices that are in the name of the petitioner			
Dated in the first quarter of 2012 (*Exhibits "P-14-z" to "P-14-dd"*)	7,963.78	-	7,963.78
No supporting documents presented (*Exhibit "P-15"*)	261,699.90	3,407,294.38	3,668,994.28
subtotal	**269,663.68**	**3,407,294.38**	**3,676,958.06**
Total	**₱ 10,816,758.68**	**₱ 7,695,395.38**	**₱18,512,154.06**

In addition, the Court finds that the input taxes on domestic purchases of services in the amount of ₱108,264.15, as detailed below, should be disallowed for petitioner's failure to meet the substantiation requirements prescribed under the afore-cited laws and regulations:

	Exhibit	2nd Quarter	3rd Quarter	Total
1. Supported by documents other than VAT Official Receipts				
International Container Terminal Services, Inc.	"P-14-a"	₱ 3,158.68	-	₱ 3,158.68
International Container Terminal Services, Inc.	"P-14-b"	2,707.44	-	2,707.44
International Container Terminal Services, Inc.	"P-14-p"	985.81	-	985.81
Asian Terminal, Incorporated	"P-14-ff"	-	₱ 2,452.31	2,452.31
Airspeed International Corporation	"P-14-gg"	-	198.00	198.00
International Container Terminal Services, Inc.	"P-14-mm"	-	1,929.28	1,929.28
Miascor Logistics Corporation	"P-14-tt"	-	180.18	180.18
International Container Terminal Services, Inc.	"P-14-mmm"	-	1,057.21	1,057.21
Asian Terminal, Incorporated	"P-14-rrr"	-	451.24	451.24
Asian Terminal, Incorporated	"P-14-sss"	-	2,002.64	2,002.64
Asian Terminal, Incorporated	"P-14-ttt"	-	902.47	902.47
International Container Terminal Services, Inc.	"P-14-uuu"	-	451.24	451.24
International Container Terminal Services, Inc.	"P-14-vvv"	-	902.48	902.48
International Container Terminal Services, Inc.	"P-14-xxx"	-	509.00	509.00
International Container Terminal Services, Inc.	"P-14-yyy"	-	2,038.56	2,038.56
subtotal		**₱ 6,851.93**	**₱ 13,074.61**	**₱ 19,926.54**
				-
2. Supported by VAT Official Receipts but VAT amount is not separately indicated thereon				
Quantuvis Resources Corporation	"P-14-e"	₱ 483.00	-	₱ 483.00
Florabella Corporation	"P-14-g"	203.57	-	203.57
Goldland Regency Management Corp.	"P-14-m"	2,593.93	-	2,593.93
Goldland Regency Management Corp.	"P-14-n"	578.57		578.57
Quantuvis Resources Corporation	"P-14-q"	3,316.69	-	3,316.69
The Plaza, Inc.	"P-14-u"	4,553.57	-	4,553.57
The Brain Computed Corporation	"P-14-v"	375.00	-	375.00
Mel Printing Services	"P-14-w"	412.50	-	412.50
Swire Travel (Phils), Inc.	"P-14-x"	798.55	-	798.55
The Plaza, Inc.	"P-14-hh"	-	₱ 3,616.07	3,616.07
Mel Printing Services	"P-14-nn"	-	353.57	353.57
EDSA Shangrila	"P-14-oo"	-	973.80	973.80
EDSA Shangrila	"P-14-pp"	-	315.60	315.60
Dusit Thani Manila	"P-14-qq"	-	33,298.27	33,298.27
Florabella Corporation	"P-14-rr"	-	267.86	267.86
EDSA Shangrila	"P-14-xx"	-	2,038.80	2,038.80
Seagull Philippines, Inc.	"P-14-zz"	-	535.71	535.71
EDSA Shangrila	"P-14-bbb"	-	5,830.92	5,830.92
EDSA Shangrila	"P-14-ccc"	-	762.00	762.00
E5 Aircondition Electronics Service Center	"P-14-eee"	-	1,052.68	1,052.68
EDSA Shangrila	"P-14-fff"	-	2,039.40	2,039.40
EDSA Shangrila	"P-14-ggg"	-	15,292.63	15,292.63

Mel Printing Services	"P-14-iii"	-	471.43	471.43
EDSA Shangrila	"P-14-lll"	-	4,959.20	4,959.20
The Plaza, Inc.	"P-14-nnn"	-	3,214.29	3,214.29
subtotal		**₱ 13,315.38**	**₱ 75,022.23**	**₱ 88,337.61**
Total Disallowances per this Court's Findings		**₱ 20,167.31**	**₱ 88,096.84**	**₱108,264.15**

Therefore, out of petitioner's declared input VAT for the 2nd and 3rd quarters of 2012 in the amount of ₱88,349,961.29, only the amount of ₱69,729,543.08 represents petitioner's valid input tax, computed as follows:

	2nd Quarter	**3rd Quarter**	**Total**
Input VAT from Current Transactions	₱ 44,542,734.11	₱ 43,807,227.18	₱ 88,349,961.29
Less: Disallowances			
a) Per Independent CPA Report	10,816,758.68	7,695,395.38	18,512,154.06
b) Per this Court's findings	20,167.31	88,096.84	108,264.15
Substantiated Input VAT	**₱33,705,808.12**	**₱36,023,734.96**	**₱69,729,543.08**

A portion, however, of the ₱69,729,543.08 substantiated input VAT shall be applied against petitioner's reported output VAT liability for the 2nd and 3rd quarters of CY 2012 in the amounts of ₱572,745.71 and ₱1,681,616.46, respectively. Hence, for the 2nd and 3rd quarters of CY 2012, only the remaining input VAT of ₱67,475,180.91 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱5,981,339,647.99 (with US$ equivalent of US$141,133,735.00) and only the input VAT of ₱57,910,100.80 is attributable to the valid zero-rated sales of ₱5,246,835,764.62 (with US$ equivalent of US$123,742,049.15), as computed below:

	2nd Quarter	**3rd Quarter**	**Total**
Substantiated Input VAT	₱ 33,705,808.12	₱ 36,023,734.96	₱ 69,729,543.08
Less: Output VAT	572,745.71	1,681,616.46	2,254,362.17
Excess Input VAT	**₱33,133,062.41**	**₱34,342,118.50**	**₱67,475,180.91**
Multiply by Substantiated Zero-rated Sales	3,565,404,402.91	1,681,431,361.70	5,246,835,764.61
Divided by Total Reported Zero-Rated Sales	3,876,914,133.26	2,104,425,514.73	5,981,339,647.99
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	**₱30,470,823.58**	**₱27,439,277.21**	**₱57,910,100.80**

Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns from the 4th quarter of 2012 to the 3rd quarter of 2013[42], the same remained unutilized since it was deducted in its Quarterly VAT

[42] Exhibits "P-16-e" to "P-16-h".

Return for the third quarter of 2013 as part of total "VAT Refund/TCC claimed" in the amount of ₱129,834,634.70[43], from the total available input tax of ₱240,936,818.31[44]. Thus, the claimed input taxes for the 2nd and 3rd quarters of 2012 could not have been carried over or utilized in the succeeding 4th quarter of 2013.

In view of the foregoing, the Court finds petitioner entitled to a refund in the reduced amount of ₱57,910,100.80, representing its unutilized excess input VAT attributable to zero-rated sales for the 2nd and 3rd quarters of CY 2012.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱57,910,100.80**, representing its unutilized excess input VAT for the 2nd and 3rd quarters of 2012 attributable to its zero-rated receipts for the same period.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[43] Exhibit "P-16-h (1/2)", line 23D, pertaining to the claims for refund for the 1st, 2nd, and 3rd quarters of 2012 in the respective amounts of ₱43,739,035.58 (under CTA Case No. 8808), ₱43,969,988.40, and ₱42,125,610.72.

[44] Exhibit "P-16-h (1/2)", line 22.

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above 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