REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NO. 8228**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 3 1 2012 4:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

The instant Petition for Review was filed by Philex Mining Corporation on February 7, 2011 to seek the refund of its alleged excess and unutilized input value-added taxes (VAT) for the third quarter of 2008 in the amount of P23,964,007.07.

Philex Mining Corporation (Petitioner) is a domestic corporation organized under Philippine laws, with principal office at 27 Brixton St., Pasig City. Petitioner is engaged in the mining business including the exploration and operation of mine properties and the commercial production and marketing of mine products, consisting principally of gold bullion and copper ore concentrates. It is a VAT-registered taxpayer as shown in its VAT Registration Certificate No. 35-6-000731 effective October 29, 1997 and BIR Form No. 2303 (as of January 31, 1997). Petitioner likewise had its Application for Zero-Rate approved effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the National Internal Revenue Code (NIRC). She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner filed its Original Quarterly VAT Return for the third quarter of 2008 on October 22, 2008. It subsequently filed an Amended Quarterly VAT Return for the third quarter of 2008 on August 20, 2010, which reflected total zero-rated sales of P2,052,639,622.54, importation of goods of P190,297,383.34 with input VAT of P22,835,686.00[2], and purchases of services of P9,402,675.59 with input tax of P1,128,321.07.

Petitioner claims that pursuant to Section 112(A) of the NIRC of 1997, as amended, it is entitled to the refund of the total excess and unutilized input VAT in the amount of P23,964,007.07 paid or incurred during the third quarter of 2008. Thus, petitioner filed a claim for refund or tax credit in the amount of P23,964,007.07 as per Application No. 62463 with the One-Stop-Shop Center

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[1] Pars. 1 and 3, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 53
[2] Exhibit "M-12"

(OSSC) of the Department of Finance (DOF) on September 22, 2010, pursuant to Section 4.112-1 of RR No. 16-2005.[3]

Respondent failed to act on petitioner's administrative claim for refund, prompting petitioner to file the instant Petition for Review on February 7, 2011.

In her Answer[4] filed on April 1, 2011, respondent raised the following Special and Affirmative Defenses:

> "4. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by the respondent;
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> 5. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 6. Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with the following, viz:
>
> A. The registration requirements of a Value-Added taxpayer under the pertinent provision of the National Internal Revenue Code (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 Section 113 and 114 of the National Internal Revenue Code (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 National Internal Revenue Code (NIRC) of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax refund which is a condition sine qua non prior to the filing of such claim;

[3] Par. 5, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 54
[4] Docket, pp. 28 to 31

D. That the input taxes of P23,964,007.07 allegedly representing excess and unutilized input taxes for the 3rd Quarter of 2008, were:

1. Paid by petitioner;

2. Attributable to its zero-rated or effectively zero-rated sales; and

3. Such input taxes paid should not have been applied against any output tax.

E. The petitioner's claim for tax refund allegedly representing excess and unutilized input taxes for the 3rd Quarter of 2008 in the amount of P23,964,007.07 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 National Internal Revenue Code (NIRC) of 1997, as amended.

7. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims and of showing, by words too plain to be mistaken, that the legislature intended to exempt them;

8. And finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

On April 4, 2011, the Court issued a Notice of Pre-Trial Conference[5] requiring both parties and their counsels to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs. In

[5] Docket, p. 32

compliance therewith, petitioner submitted its Pre-Trial Brief[6] on April 19, 2011; while respondent filed her Pre-Trial Brief[7] on May 5, 2011.

As ordered by the Court, the parties submitted their Stipulation of Facts and Issues[8] on May 26, 2011; which was approved by the Court in a Resolution[9] dated May 30, 2011. In said Resolution, the Court also considered the pre-trial terminated and the parties were ordered to proceed with the trial on the merits, presenting only evidence not covered by their Stipulation of Facts.

On May 26, 2011, due to the voluminous nature of the evidence to be presented, petitioner filed a Motion to Commission Independent Auditor.[10] During the hearing on June 22, 2011, the Court granted petitioner's motion to commission an Independent Certified Public Accountant (ICPA) and consequently, Mr. Albert G. Alba was commissioned and appointed as ICPA.[11] On July 22, 2011, Mr. Alba submitted his Report dated July 21, 2011 to the Court.[12]

During trial, petitioner presented documentary and testimonial evidence to support its claim for refund. On October 12, 2011, petitioner formally offered before the Court the testimony of its witness, Ms. Eileen C. Rodriguez, the testimony of the Court-commissioned ICPA and documentary evidence marked as Exhibits "A" to "O", inclusive of their sub-markings.[13] In a

[6] Docket, pp. 33 to 36
[7] Docket, pp. 37 to 39
[8] Docket, pp. 53 to 54
[9] Docket, p. 60
[10] Docket, pp. 47 to 48
[11] Minutes of the June 22, 2011 Hearing, docket, p. 62
[12] Exhibit "D"
[13] Docket, pp. 69 to 72

Resolution[14] dated December 26, 2011, the Court admitted the foregoing evidence, except for Exhibit "B-1", which was denied admission for not being identified and marked during trial.

During the hearing on January 30, 2012, respondent's counsel manifested that she has no witness to present, and upon motion of respondent's counsel, respondent was given a period of thirty (30) days from January 30, 2012 or until February 29, 2012 within which to file her memorandum. The Court also gave petitioner a period of twenty (20) days from notice within which to file its memorandum.[15]

The case was submitted for decision on April 3, 2012[16], taking into consideration petitioner's Memorandum[17] filed on March 6, 2012 and respondent's Memorandum[18] filed on March 29, 2012.

The sole issue stipulated by the parties for this Court's resolution is whether or not petitioner is entitled to the refund or tax credit of the alleged excess and unutilized input taxes in the total amount of P23,964,007.07 for the third quarter of 2008.[19]

Petitioner invokes Section 112(A) of the NIRC of 1997, as amended, as the legal basis for its entitlement to the refund of its excess and unutilized input VAT for the third quarter of 2008, which are attributable to its zero-rated sales.

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[14] Docket, pp. 78 to 79
[15] Minutes of the January 30, 2012 Hearing, docket, p. 85; Resolution dated January 30, 2012, docket, p. 87
[16] Resolution dated April 3, 2012, docket, p. 117
[17] Docket, pp. 91 to 106
[18] Docket, pp. 107 to 116
[19] Statement of the Issues, Stipulation of Facts and Issues, docket, p. 54

Section 112(A) of the NIRC of 1997, as amended, provides:

> "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 sales 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: xxx"

Pursuant to Section 112(A) of the NIRC of 1997, a claimant must comply with the following requisites to be entitled to a refund or tax credit of unutilized input VAT attributable to its zero-rated or effectively zero-rated sales:

1. that there must be zero-rated sales or effectively zero-rated sales;
2. that input VAT were incurred or paid;
3. that such input VAT are attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the administrative and judicial claims for refund were filed within the prescribed period.

Timeliness of the filing of the administrative and judicial claims

Before delving into the merits and substantiation of petitioner's claim for refund of excess and unutilized input VAT in the amount of P23,964,007.07, the Court will resolve first petitioner's compliance with the fifth requirement pertaining to prescription.

The Court noted that the parties have stipulated that the filing of petitioner's administrative claim for refund with the OSSC of the DOF on September 22, 2010 is well within the two-year period prescribed in Section 112(A) of the NIRC of 1997, as amended.[20]

Section 112(A) of the NIRC of 1997, as amended, specifically requires that the taxpayer's application for refund or tax credit of unutilized or excess creditable input VAT arising from its domestic purchases of goods and services and importations, which are attributable to its zero-rated or effectively zero-rated sales, must be made within two years after the close of the taxable quarter when such sales were made.

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[21], the Supreme Court elucidated that:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (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**

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[20] Par. 5, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 54
[21] G.R. No. 172129, September 12, 2008

> **the close of the taxable quarter <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx (Emphasis ours.)
>
> The above proviso clearly provides in no uncertain terms **that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid**. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed." (*Emphasis supplied*)

Based on the foregoing, it is clear that the two-year prescriptive period for the filing of an administrative claim for refund or tax credit of input VAT attributable to zero-rated sales shall be reckoned from the close of the taxable quarter when the pertinent sale or transaction was made.

Petitioner's claim for refund or tax credit pertains to input VAT generated during the third quarter of 2008, specifically, July 2008 to September 2008. Petitioner had until September 30, 2010 within which to file its administrative claim for refund or tax credit. Petitioner filed its claim for refund or tax credit with the OSSC of the DOF on September 22, 2010.[22] Hence, as aptly stipulated by the parties, petitioner timely filed an administrative claim for refund of its unutilized input VAT attributable to its zero-rated sales, covering the third quarter of 2008.

The Court will now proceed to determine whether petitioner's judicial claim for refund of input VAT generated for the third quarter of 2008 was timely filed pursuant to Section 112(C) of the NIRC of 1997, as amended, which provides that:

> "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 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 above-quoted provision, the taxpayer has thirty (30) days from its receipt of the decision denying the claim for refund or issuance of tax credit certificate or after the expiration of the one hundred twenty (120)-day

[22] Exhibit "N"

period from the date of submission of complete documents to appeal the decision or the inaction of the BIR Commissioner with this Court.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, (*Aichi case*)[23], the High Tribunal applied the provision of Section 112(C) of the NIRC of 1997, as amended, which was formerly Section 112(D) prior to its amendment by Republic Act (RA) No. 9337, and ruled that:

> "Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> In this case, **the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature**.
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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.' **The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to**

[23] G.R. No. 184823, October 6, 2010

> **applications for refund/credit filed with the CIR and not to appeals made to the CTA.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.
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> In fact, **applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**
>
> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA." (*Emphasis supplied*)

Based on the *Aichi case*, the second paragraph of Section 112(C) envisions two scenarios: (1) when a decision is issued by the Revenue Commissioner before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. Likewise, the *Aichi case* emphasized that the 120-day period mentioned in Section 112(C) of the NIRC of 1997, as amended, is crucial in filing an appeal with this Court.

In this case, petitioner filed its administrative claim for refund or tax credit with the OSSC of the DOF on September 22, 2010. Petitioner alleges that the supporting documents for said claim for refund or tax credit were likewise filed on the same date.[24] Hence, the Court shall reckon the 120-day period from the filing of petitioner's administrative claim for refund or tax credit on September 22, 2010. Consequently, respondent had until January 20, 2011 within which to act on the administrative claim for refund or tax credit. In case of inaction on the part of respondent, which was what actually transpired in this case, petitioner had thirty (30) days from January 20, 2011 or until February 19, 2011 within which to seek judicial relief. Accordingly, the instant Petition for Review, which was filed on February 7, 2011, was timely filed by petitioner.

The Court shall now address the merits of petitioner's claim for refund, particularly, petitioner's compliance with the first four requisites.

Existence of zero-rated sales

As stated above, the first requisite is that there must be zero-rated sales or effectively zero-rated sales. The Court-commissioned ICPA noted in his Report[25] dated July 21, 2011 that petitioner had zero-rated sales amounting to US$44,167,731.00 with Philippine peso equivalent of P2,052,639,622.52, as reported in petitioner's Amended Quarterly VAT Return for the third quarter of 2008, the particulars of which were described in page 2 of the ICPA's Report, as follows: gr

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[24] Par. 10, Statement of Facts, Petition for Review, docket, p. 9
[25] Exhibit "D"

Particulars	Amount
Provisional billings for direct export sales of copper to Japan	US$53,236,667.00
Adjustments to previous quarters' provisional billings	(9,068,936.00)
TOTAL	US$44,167,731.00

Petitioner claims that its shipments and sales of mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, Japan are VAT 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
>
> (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);"

Evident from the afore-cited provision of law is that in order for an export sale to qualify as VAT zero-rated, the following conditions must be present:

1. there was a 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.

As stipulated by the parties, petitioner is a VAT-registered entity with an approved Application for Zero-Rate.[26]

On the other hand, to substantiate its export sales for the third quarter of taxable year 2008 and that the foreign exchange proceeds thereof were duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP), petitioner proffered its Long Term Gold and Copper Concentrates Sales Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan[27], provisional and final sales invoices[28], bills of lading[29], export declarations[30], certificates of remittances issued by local banks[31], and passbook pages showing amounts and dates of remittances[32].

Pursuant to its Long Term Gold and Copper Concentrates Sales Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan[33], for the period covering the third quarter of 2008, petitioner actually shipped mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, Japan and generated export sales as shown in petitioner's Schedule of Export Sales[34] and various export documents such as provisional and final sales invoices[35], bills of lading[36] and export declarations[37].

While the Court noted that the final invoices submitted by petitioner bear dates much later than the dates of shipment indicated in the bills of

[26] Par. 3, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 53
[27] Exhibit "B"
[28] Exhibits "E-1-b" to "E-11-b" and "E-1-c" to "E-11-c"
[29] Exhibits "E-1-a" to "E-11-a"
[30] Exhibits "E-1" to "E-11"
[31] Exhibits "F-1" to "F-4"
[32] Exhibits "F-1-a" to "F-4-b"
[33] Exhibit "B"
[34] Exhibit "E"
[35] Exhibits "E-1-b" to E-11-b"; Exhibits E-1-c" to "E-11-c"
[36] Exhibits "E-1-a" to "E-11-a"
[37] Exhibits "E-1" to "E-11"

lading and provisional invoices, petitioner's witness, Ms. Eileen C. Rodriguez, sufficiently explained that in its direct exports of copper concentrates, it issues two invoices to the buyer. First, a *Provisional Invoice* covering ninety percent (90%) of the estimated value of the shipment is issued by petitioner upon shipment of the mineral products or copper concentrates to its foreign buyer. Second, a *Final Invoice* is issued by petitioner to its foreign buyer after petitioner and its foreign buyer have reached an agreement regarding the final settlement weights, assays and quotations and the final price of the shipment. This procedure is clearly laid down under Clause 9 of petitioner's Long Term Gold and Copper Concentrates Sales Agreement with Pan Pacific Copper Co., Ltd. of Japan.[38]

In view thereof, the Court holds that the actual shipment date of the mineral products, as appearing in the bills of lading, should be regarded as the actual date when the export sales took place.

As borne by the records of this case, the bills of lading[39] covering the export sales of US$53,236,667.00 were all dated within the third quarter of 2008. Accordingly, said bills of lading, together with the provisional and final sales invoices[40] and export declarations[41], are deemed sufficient to prove that there were actual export sales and actual shipment of goods from the Philippines to a foreign country. The Court noted, however, that out of the total export sales of US$53,236,667.00, the amount of US$402,906.00 was

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[38] Exhibit "A"
[39] Exhibits "E-1-a" to "E-11-a"
[40] Exhibits "E-1-b" to E-11-b"; Exhibits E-1-c" to "E-11-c"
[41] Exhibits "E-1" to "E-11"

supported by provisional[42] and final invoices[43] which were not duly registered with the BIR as there was no BIR Permit number reflected thereon and also the word "VAT" after petitioner's TIN was not imprinted in said provisional and final invoices. These are clear violations of the invoicing requirements under Sections 113[44], 237[45] and 238[46] of the NIRC of 1997, as amended, and as implemented by Section 4.113-1 of RR No. 16-2005[47]. In short, only the export sales in the amount of US$52,833,761.00 (US$53,236,667.00 less US$402,906.00) were properly substantiated.

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[42] Exhibit "E-4-b"
[43] Exhibit "E-4-c"
[44] 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:
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; xxx
[45] 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 merchandise or nature of service: x x x
[46] 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.
[47] SEC. 4.113-1. *Invoicing Requirements.* —
xxx xxx xxx
(B) *Information contained in VAT invoice or VAT official receipt.* – The following information shall be indicated in VAT invoice or VAT official receipts:
(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; xxx

Likewise, as stated in the Report[48] of the Court-commissioned ICPA, the foreign currency proceeds derived from said export sales were inwardly remitted and accounted for in accordance with the rules and regulations of the BSP as evidenced by the certificates of remittances[49] issued in the name of petitioner by local banks and entries in petitioner's passbooks[50] with local banks.

The Court also found that the adjustments to correct billings for previous quarter's shipments in the amount of negative US$9,068,936.00 was properly documented as shown in the provisional and final sales invoices[51], bills of lading[52] and export declarations[53] submitted by petitioner.

In fine, petitioner's export sales in the amount of US$43,764,825.00 (US$52,833,761.00 plus negative US$9,068,936.00) with peso equivalent of P2,033,915,074.05, as computed below, qualify for VAT-zero rating:

Declared Zero-Rated Sales in Peso	2,052,639,622.52
Divided by Declared Zero-Rated Sales in US$	44,167,731.00
Average peso to dollar rate	46.4737394484
Multiplied by Substantiated Zero-rated Sales in US$	43,764,825.00
Substantiated Zero-Rated Sales in Peso	**2,033,915,074.05**

Input VAT paid or incurred

After having resolved that petitioner's export sales for the third quarter of 2008 in the amount of US$43,764,825.00 with peso value equivalent of

[48] Exhibit "D", pp. 2 to 3
[49] Exhibits "F-1" to "F-4"
[50] Exhibits "F-1-a" to "F-4-b"
[51] Exhibits "E-1-b" to E-11-b"; Exhibits E-1-c" to "E-11-c"
[52] Exhibits "E-1-a" to "E-11-a"
[53] Exhibits "E-1" to "E-11"

P2,033,915,074.05 qualify for VAT zero-rating, the Court shall now proceed to determine the amount of input VAT attributable thereto.

In its Amended Quarterly VAT Return covering the third quarter of 2008, petitioner reflected input VAT of P1,128,321.07 on domestic purchases of services and input VAT of P22,835,686.00 on importations of goods, or a total input VAT of P23,964,007.07 as shown below:

Particulars	**Purchases**	**Input Tax**
Domestic Purchases of Services	P 9,402,675.59	P 1,128,321.07
Importations of Goods	190,297,383.34	22,835,686.00
TOTAL	P199,700,958.93	P23,964,007.67

To substantiate the above-mentioned input VAT, petitioner presented its Schedule of Input Taxes on Importations of Goods[54] and the related Import Entry and Internal Revenue Declarations (IEIRDs)[55], Bureau of Customs Official Receipts (ORs) or bank debit advises[56], Schedule of Input Taxes on Domestic Purchases of Services[57] and the related suppliers' official receipts[58], which were examined by the Court-commissioned ICPA.

After a thorough examination and review of the ICPA's Report[59] dated July 21, 2011, including the supporting documents submitted to the Court, the following input VAT in the total amount of P2,202,420.94 should be disallowed from petitioner's claim for failure to meet the substantiation requirements

[54] Exhibits "G" and "H"
[55] Exhibits "G-1-a to G-50-a" and "H-1"
[56] Exhibits "G-1 to G-50" and "I-1 to I-9"
[57] Exhibit "K"
[58] Exhibits "K-1" to "K-80"
[59] Exhibit "D"

under Sections 110(A) and 113(A) of the NIRC of 1997, as amended, in relation to Sections 4.110-8[60] and 4.113-1(B) of RR No. 16-2005:

Findings	Exhibit No.	Input VAT
1. **Input VAT on importation of goods supported by original IEIRDs without machine validation**		
AIA Engineering Ltd Ahmedabad	H-1	Php 1,373,156.00
Sub-total		**1,373,156.00**
2. **Input VAT on importation of goods supported by original BCORs not dated/dated outside the period of claim.**		
Normet Corp. - Entry No. 89330692	I-1 (2/2)	362.00
AIA Engineering Ltd Ahmedabad - Entry No. 88791175	I-2	1,961.00
Crushing and Mining Equip Pty Ltd - Entry No.89330771	I-3	1,012.00
Normet Corp. - Entry No. 89446	I-4	1,488.00
Sub-total		**4,823.00**
3. **Overclaimed Input VAT on importation of goods supported by original BCORs**		
AIA Engineering Ltd Ahmedabad - Entry No. 91295547	I-6	300.00
Sub-total		**300.00**
4. **Input VAT on importation of goods supported by Bank OR, the input VAT of which cannot be ascertained**		
Fuji Trading Co. Ltd	I-9	72,759.00
Sub-total		**72,759.00**
5. **Input VAT on importation of goods without supporting documents**		
Normet Corporation		90,281.00
Nasaco International Ltd		1,919.00
BASF South East Asia PteLtd.		153,485.00
Sub-total		**245,685.00**
6. **Overclaimed Input VAT on domestic purchases of services**		
International Container Terminal	K-43	468.93
Sub-total		**468.93**

[60] SEC. 4.110-8. *Substantiation of Input Tax Credits.* –

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) xxx

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

7.	**Input VAT on domestic purchases of services supported by documents other than TIN-VAT official receipts**		
	DHL Global forwarding	K-48	144.00
	Olympics Int'l Forwarders Corp.	K-103	535.46
	Sky Freight Forwarders	K-108	989.16
	Sky Freight Forwarders	K-109	216.00
	Sky Freight Forwarders	K-110	3,474.90
	Philippine Equity Partners	K-127	235,794.45
	Philippine Equity Partners	K-128	46,302.96
	Sub-total		**287,456.93**
8.	**Input VAT on domestic purchases of services supported by official receipts not in the name of the petitioner**		
	Schenker Phils. Inc.	K-50	540.14
	Sub-total		**540.14**
9.	**Input VAT on domestic purchases of services supported by Non-VAT official receipts**		
	Sky Freight Forwarders	K-65	2,854.67
	Sky Freight Forwarders	K-94	407.77
	Sky Freight Forwarders	K-133	315.54
	Sky Freight Forwarders	K-134	687.06
	Sub-total		**4,265.04**
10.	**Input VAT on domestic purchases of services supported by TIN-VAT official receipts dated outside the period of claim**		
	Jemara International Freight	K-135	256.84
	Agility International Logistics, Inc.	K-136	288.00
	CEVA Logistics Phils., Inc.	K-137	424.13
	Mercury Freight	K-138	1,148.16
	Schenker Phils. Inc.	K-139	597.46
	Peoples Air Cargo and Warehouse	K-140	51.74
	Kintetsu World Express	K-141	288.00
	International Container Terminal	K-142	747.02
	Asian Terminals, Inc.	K-143	115.51
	Asian Terminals, Inc.	K-144	338.16
	International Container Terminal	K-145	1,716.78
	Panalpina World Transport	K-146	132.00
	International Container Terminal	K-147	400.48
	International Container Terminal	K-148	1,156.50
	Asstn of Intl Shipping Lines	K-149	2.68
	Asstn of Intl Shipping Lines	K-150	45.00
	ATI Batangas Inc.	K-151	624.57
	Philippine Ports Authority	K-152	414.57
	Asstn of Intl Shipping Lines	K-153	45.00
	International Container Terminal	K-154	3,611.93
	International Container Terminal	K-155	800.96
	DHL Danza's Air and Ocean	K-156	108.00

	Philippine Skylanders	K-157	69.27
	SYN Expeditors Intl	K-158	603.12
	DHL Express	K-159	109.91
	Asstn of Intl Shipping Lines	K-160	5.36
	Airfreight 2100 Inc.	K-161	75.00
	Hankyu Intl Transport	K-162	108.00
	All Systems Logistics	K-163	118.28
	Asstn of Intl Shipping Lines	K-164	18.75
	Acestar International Services	K-165	446.54
	Airfreight 2100 Inc.	K-166	75.00
	International Container Terminal	K-167	2,402.88
	International Container Terminal	K-168	984.92
	Asstn of Intl Shipping Lines	K-169	16.07
	Kintetsu World Express	K-170	108.00
	International Container Terminal	K-171	2,904.18
	Panalpina World Transport	K-172	216.00
	DHL Express	K-173	114.00
	DHL Express	K-174	49.05
	Panalpina World Transport	K-175	216.00
	International Consolidator Phils	K-176	216.00
	Freight Connection	K-177	293.40
	Macnels Shipping	K-178	499.20
	Peoples Air Cargo and Warehouse	K-179	100.14
	Orient Freight International	K-180	2,004.30
	Sub-total		**25,066.86**
11.	**Input taxes on domestic purchases of services without supporting documents**		
	Sky Freight Forwarders		2,562.06
	CP World Phils		664.74
	Sky Freight Forwarders		1,041.72
			144.00
	No Subsidiary Required		2.00
	Sky Freight		1,513.21
	Asstn of Intl Shipping Lines		8.04
	International Container Terminal		1,432.46
	Others		180,531.81
	Sub-total		**187,900.04**
	Total		**Php 2,202,420.94**

In view of the foregoing, only the remaining claim in the amount of P21,761,586.13 (P23,964,007.07 less P2,202,420.94) represents petitioner's valid input tax which is attributable to its zero-rated sales for the third quarter of 2008. *ge*

Input VAT is Attributable to Zero-Rated Sales

Anent the third requisite, the Court noted that petitioner had sales subject to 12% VAT during the third quarter of 2008 in the amount of P28,241,602.50[61], with corresponding output VAT liability of P3,388,992.30[62]. Thus, it cannot be said that petitioner's input taxes for the third quarter of 2008 are entirely attributable to its zero-rated sales.

The last proviso of Section 112(A) of the NIRC of 1997 states:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — xxx 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."

Based on the above-cited provision, considering that petitioner had sales subject to 12% VAT and zero-rated sales during the third quarter of 2008, the input VAT incurred during said quarter, which cannot be directly and entirely attributed to any of these transactions, shall be allocated proportionately on the basis of the volume of sales.

In view thereof, a portion of the substantiated input VAT of P21,761,586.13 shall be applied against petitioner's reported output VAT liability of P3,388,992.30. Consequently, only the remaining input VAT of P18,372,593.83 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P2,052,639,622.52 and furthermore, only the input

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[61] Line 15A, Exhibit "M-12"
[62] Line 15B, Exhibit "M-12"

VAT of P18,204,995.72 is attributable to the substantiated zero-rated sales of P2,033,915,074.05, as computed below:

Substantiated input VAT	P 21,761,586.13
Less: Output Tax	3,388,992.30
Excess input VAT	**P 18,372,593.83**

Substantiated Zero-rated Sales	P 2,033,915,074.05
Divided by Total Reported Zero-Rated Sales	÷ 2,052,639,622.52
Multiplied by Substantiated Excess Input VAT	x 18,372,593.83
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	**P 18,204,995.72**

Input VAT were not applied against any output VAT liability during and in the succeeding quarters

With regard to the fourth requisite, as evidenced by its Quarterly VAT Returns[63] from the third quarter of 2008 to the second quarter of 2010, petitioner was able to prove that the input VAT of P18,204,995.72 was not applied against any output VAT in the succeeding quarters. Even though petitioner carried over the claimed unutilized input VAT for the third quarter of taxable year 2008 to the succeeding fourth quarter of 2008 until the second quarter of 2010, the same was deducted as "Any VAT Refund/TCC Claimed"[64] from the total available input tax of P263,409,376.51 in the second quarter of 2010. In other words, the subject claim no longer formed part of the excess input VAT of P233,504,510.38[65] as of the second quarter of 2010, which was to be carried over/applied to the succeeding third quarter of 2010.

[63] Exhibits "M-12" to "M-19"
[64] Exhibit "M-19", line 23D
[65] Exhibit "M-19", line 29

Submission of complete documents in support of the administrative claim and compliance with the requirements of RR No. 16-2005 and RMC No. 62-2005

Finally, in her Memorandum, respondent argues that while petitioner filed its claim for refund with the OSSC of the DOF on September 22, 2010, petitioner failed to prove with certainty that it complied with the requirement to submit complete documents in support of its application for refund. Respondent avers that failure on the part of petitioner to prove the submission of complete documents is fatal to its claim.

Respondent also contends that petitioner failed to prove that it fully met the invoicing requirements under RR No. 16-2005 and Revenue Memorandum Circular (RMC) No. 62-2005 and the requirements of RR No. 16-2005 regarding additional accounting records that should be maintained by a VAT taxpayer as well as the requirement to file monthly VAT Declarations (BIR Form No. 2550M).

The Court finds no merit in respondent's contentions.

Section 112(C) of the NIRC of 1997, as amended, provides:

> "SEC. 112. *Refunds of 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 Subsections (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period

> prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Settled is the rule that in a judicial claim for VAT, the alleged non-submission of complete documents at the administrative level is not fatal to a judicial claim. This means that it will not bar this Court from receiving, evaluating, and appreciating evidence submitted before it. Once the claim for refund has been elevated to this Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[66]

Anent respondent's allegation that petitioner failed to prove compliance with the invoicing and accounting requirements under RR No. 16-2005, the Court finds the same untenable.

As elucidated above, petitioner was able to present suppliers' official receipts[67], IEIRDs[68], and Bureau of Customs ORs or bank debit advises[69], which were meticulously reviewed by the Court. In sum, the Court finds petitioner entitled to a refund in the reduced amount of P18,204,995.72,

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[66] *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB Case No. 589, January 12, 2011 citing Consolidated Cases of *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 553 and *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 554, July 20, 2010, *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 523, April 15, 2010; CTA EB No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*, CTA EB Case No. 282 (CTA Case Nos. 6790 & 6838), November 20, 2007, citing *Jideco Manufacturing Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6552, September 16, 2004

[67] Exhibits "K-1" to "K-80"

[68] Exhibits "G-1-a" to "G-50-a" and "H-1"

[69] Exhibits "G-1" to "G-50 and "I-1" to "I-9"

representing excess and unutilized input VAT attributable to its zero-rated sales for the third quarter of 2008.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** the amount of **P18,204,995.72** to petitioner Philex Mining Corporation, representing excess and unutilized input VAT from its domestic purchases of services and importations of goods attributable to its zero-rated sales for the third quarter of 2008.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Wellness Leave)
CIELITO N. MINDARO-GRULLA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division