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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILEX MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6892 and 7014

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUL 09 2008 7:1:10 pm

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DECISION

CASANOVA, *J.*:

Nature of the Case

The Petition for Review seeks for the refund of input value added tax (VAT) on importations and domestic purchases attributable to its zero-rated sales in the amounts of P2,880,805.37 and P4,238,224.13 for the 1st and 2nd quarters of 2002, respectively.

Statement of the Facts

The facts of the case are as follows:

Petitioner, Philex Mining Corporation, is a corporation organized under the Philippine laws with principal office at 27 Brixton Street, Pasig City.[1] It is engaged in the mining business, which includes the exploration, development, and operation of mining properties

[1] Page 1, Petition for Review; Page 1, CTA Records

for commercial production, and the marketing of marketable mine products produced by it, such as copper ore and gold.[2] Petitioner is likewise a VAT-registered taxpayer.[3]

Respondent Commissioner of Internal Revenue is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or credit of tax erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code, with address at the BIR National Office, Diliman, Quezon City.[4]

For the 1st quarter of 2002, petitioner filed its Quarterly Value Added Tax Return on April 10, 2002.[5] Subsequently, petitioner filed an Amended Quarterly VAT Return on December 2, 2003.[6]

Petitioner filed its Quarterly Value Added Tax Return[7] for the 2nd quarter on July 2002.[8]

On November 20, 2002, petitioner filed an application for tax credit/refund of VAT paid for the 1st quarter of 2002 or for the period January 1, 2002 to March 31, 2002, in the amount of P2,880,805.37.[9] Subsequently, another application for tax credit/refund was filed on March 1, 2004 for the second quarter of 2003 or for the period April 1, 2002 to June 30, 2002 in the amount of P4,238,224.13.[10]

Petitioner likewise filed its claim for refund/tax credit with the One Stop Shop Center of the Department of Finance on December 17, 2003 and March 12, 2004, respectively.[11]

Due to respondent's inaction,[12] petitioner filed a Petition for Review on March 15, 2004 covering the 1st quarter of 2002.[13]

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[2] Paragraph 1, Page 1, Consolidated Stipulation of Facts and Issues; Page 51, CTA Records
[3] Paragraph 2, Page 1, Consolidated Stipulation of Facts and Issues; Page 51, CTA Records
[4] Page 1, Petition for Review; Page 1, CTA Records
[5] Exhibit B
[6] Exhibit B-1
[7] Exhibit C
[8] Exhibit M
[9] Paragraph 4, Page 1, Consolidated Stipulation of Facts and Issues; Pages 51-52, CTA Records
[10] *id.*
[11] Paragraph 5, Page 2, Consolidated Stipulation of Facts and Issues; Page 52, CTA Records

Respondent by way of special and/or affirmative defenses averred among others: [14]

> "7. The claim for refund is still under examination by the respondent's Bureau;
>
> 8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 9. The grant of claim for refund [is] tantamount to an exemption from taxation which is construed strictly against the claimant and in favor [of] the taxing authority; and
>
> 10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show [sic] clear and unambiguous provisions of law supporting the same."

Petitioner then, filed another Petition for Review on June 28, 2004 covering the 2nd quarter of 2002.[15]

Subsequently, on August 20, 2004, the parties filed their Joint Motion to Consolidate[16] CTA Case Nos. 6892 and 7014, which the Court granted on September 17, 2004.[17]

On February 1, 2005, the parties filed their Consolidated Stipulation of Facts and Issues,[18] which this Court approved in a Resolution dated February 10, 2005.[19]

Petitioner presented its testimonial and documentary evidence. Respondent, however, on a Manifestation filed on June 21, 2007, stated that it is submitting the case for resolution without further proceedings for the presentation of evidence.[20]

Thus, on a September 18, 2007 Resolution, this case was submitted for decision taking into consideration the petitioner's Memorandum filed on September 14, 2007, *sans* respondent's Memorandum.[21]

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[12] Paragraph 8, Page 2, Consolidated Stipulation of Facts and Issues; Page 52, CTA Records
[13] Docketed as CTA Case No. 6892
[14] Paragraphs 7-10, Page 2, Answer; Page 21, CTA Records
[15] Docketed as CTA Case No. 7014
[16] Page 28, CTA Records
[17] Page 31, CTA Records
[18] Pages 51-53, CTA Records
[19] Page 55, CTA Records
[20] Page 247, CTA Records

The Issues

The issues[22] to be resolved are the following:

I

Whether petitioner's domestic purchases and importations of goods which are attributable to its direct and indirect export sales for the 1st and 2nd quarters of 2002 are duly supported by documentary evidence.

II

Whether the accumulated or excess input VAT was not utilized or applied by the petitioner against output VAT in the same 1st and 2nd quarters of 2002 or in the succeeding taxable years.

III

Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

IV

Whether or not petitioner is entitled to the refund of the excess input taxes in the total amount of P2,880,805.37 and P4,238,224.13 for the 1st and 2nd quarters of 2002, due to petitioner being an exporter of mineral products.

The Court's Ruling

For refund/tax credit of unutilized input VAT, Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, provides:

> "**Section 112.** *Refunds or Tax Credits of Input Tax—*
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two(2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated 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

[21] Page 285, CTA Records
[22] Paragraphs 1-4, Pages 2-3, Consolidated Stipulation of Facts and Issues; Pages 52-53, CTA Records

entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Thus, the following requisites must be complied with, viz:

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

In this manner, the issues can be simplified as follows: whether or not petitioner is entitled to a refund in the amounts of P2,880,805.37 and P4,238,224.13, or in the sum of P7,119,029.50, representing excess input taxes for the 1st and 2nd quarters of 2002, respectively.

Timeliness of the claim

Within two years after the close of the taxable quarter when the sales were made, a VAT registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such zero-rated or effectively zero-rated sales.[23] However, the taxpayer, shall pay on a monthly basis the value added tax and, within twenty five (25) days following the close of each taxable quarter, shall file a quarterly return of the amount of his gross sales receipts.[24]

In any case, no suit or proceeding shall be filed after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.[25]

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[23] Section 112 (A) of the NIRC of 1997, as amended
[24] Section 114 (A) of the NIRC of 1997, as amended
[25] Section 229 of the NIRC of 1997, as amended

Further, in the computation of the two-year prescriptive period, a "year" is understood to be of twelve (12) calendar months, irrespective of the number of days in a month.[26]

The two-year prescriptive period for the filing of a claim for VAT refund should not be counted from the close of the quarter, but from the date of filing of the VAT Return, for it is only during that date that the VAT liability or refundability can be determined.[27]

For the 1st quarter of 2002, petitioner filed its VAT return[28] on April 10, 2002. Albeit that year 2004 is a leap year, petitioner had until April 10, 2004, within which to file a claim.

Nonetheless, April 10, 2004 falls on a Saturday.

Under the 1997 Rules of Civil Procedure, if the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.[29] Thus, petitioner has until April 12, 2004, within which to file a claim covering the 1st quarter of 2002.

For the 2nd quarter, petitioner proffered its VAT return.[30] However, no date was indicated on the said document, except that as according to the Assistant Manager in Accounting Division, Ms. Eileen Rodriguez' Sworn Statement, it was filed on July 2002.[31]

Even disregarding the exact date of filing, petitioner has until July 2004, within which to file its claim for the 2nd quarter.

Petitioner filed its administrative claim for the 1st quarter on November 20, 2002,[32] and the Petition for Review on March 15, 2004. While for the 2nd quarter, petitioner filed its administrative claim on March 1, 2004,[33] and the Petition for Review on June 28, 2004.

[26] *Commissioner of Internal Revenue vs. Primetown Property Group, Inc.,* G.R. No. 162155, August 28, 2007
[27] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007
[28] Exhibit B
[29] Section 1, Rule 22 of the Rules of Court
[30] Exhibit C
[31] Exhibit M
[32] Paragraph 4, Page 1-2, Consolidated Stipulation of Facts and Issues; Page 51-52, CTA Records
[33] *id.*

Thus, petitioner's claims are well within the two-year prescriptive period.

Domestic purchases and importations of goods attributable to direct and indirect export must be duly supported by documentary evidence.

Based on petitioner's VAT returns[34] for the 1st and 2nd quarters of 2002, the Court-commissioned Independent CPA, Mr. Albert G. Alba, noted the export sales amounting to US$16,117,673.00 and US$17,320,815.00 with a peso value equivalent to P824,524,842.84 and P868,807,891.03, respectively, thus:

Particulars	1st Quarter	2nd Quarter
Current Quarter's Shipments:		
Direct exports of:		
Copper to Japan	US$ 8,165,488.00	US$ 8,835,630.00
Gold to England	793,445.00	416,157.00
Indirect Exports of copper to PASAR	7,107,233.00	7,494,309.00
	US$16,066,166.00	US$16,746,096.00
Previous Quarters' Shipments		
Adjustment to correct previous billings	51,507.00	574,719.00
Total Zero-Rated Sales	**US$16,117,673.00**	**US$17,320,815.00**

It bears stressing that any person claiming VAT zero-rated on direct export sales must present the following, to wit: a) sales invoice, as proof of sale of goods; b) export declaration and bill of lading or airway bill, as proof of actual shipment of goods from the Philippines to a foreign country, and c) bank credit advice, certificate of bank remittance or any other document, as proof of payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Section 106(A)(2)(a)(1) of the National Internal Revenue Code of 1997, as amended, states:

> "**Section 106.** *Value-Added Tax on Sale of Goods or Properties.—*
>
> (A) *Rate and Base of Tax.—* xxx
> xxx xxx xxx

[34] Exhibits W-1 and W-2

(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)."

In addition, Section 113 of the same Code, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, prescribes that a VAT registered person, shall for every sale, issue an invoice or receipt which must contain the following information:

"**Section 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.—*

(A) *Invoicing Requirements.—*A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(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."

"**Section 4.108-1.** *Invoicing Requirements* – All VAT registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Section 100 and 102 of the Code.

xxx xxx xxx"

Further, the invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, to wit:

"**Section 237.** *Issuance of Receipts or Sales or Commercial Invoices.*—All persons subject to an internal revenue tax shall, for each sale or 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"

"**Section 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.

xxx xxx xxx"

In substantiating the export sales and establishing that the foreign exchange proceeds were in accordance with the rules and regulations of the Bangko Sentral ng

Pilipinas (BSP), petitioner tendered its sales invoices, bills of lading, export declarations and proofs of inward remittances.[35]

However, the Court notes that the sales invoices[36] supporting petitioner's direct export sales of gold to England in the amounts of US$ 793,445.00 and US$416,157.00 for the 1st and 2nd quarters, respectively, were not duly registered with the BIR since there was no BIR Permit number reflected therein.

Further, the word "VAT" after petitioner's TIN was not imprinted which is a clear violation of the invoicing requirements under Sections 113, 237 and 238 of the NIRC of 1997 and Section 4.108-1 of Revenue Regulations No. 7-95, hence, cannot be considered.

In addition, the airway bills[37] supporting the said sales are mere photocopies, thus, the Court denied its admission.[38]

On the other hand, based on the Summary of Sales and Remittances[39] for the direct export sales of copper concentrates to Japan, two sales invoices corresponding to the 1st quarter, bearing nos. 2203 and 2207, has gross sales of U$4,087,842.00 and US$4,077,647.00, respectively.

However, petitioner did not present the said invoices.

Rather, petitioner submitted invoices numbered 2212,[40] dated May 15, 2002, and 2218,[41] dated July 3, 2002, reflecting gross sales amounts of US$3,598,081.02 and US$3,592,430.10, respectively.

Further, the bills of lading[42] for 1st quarter of 2002 submitted by petitioner to prove actual shipment/exportation of its copper concentrates to Japan were mere machine copies, again inadmissible as evidence.

[35] Exhibits O-1 to O-8, O-2-a to O-6-a, O-1-b to O-8-b, P-1 to P-10, P-1-a to P-4-a, P-1-b to P-10-b, Q-1 to Q-4, and R-1 to R-4
[36] Exhibits O-3 to O-6 and P-3 to P-4
[37] Exhibits O-3-b, O-4-b, O-5-b, and O-6-b
[38] Page 240, CTA Records
[39] Exhibit Q
[40] Exhibit O-1
[41] Exhibit O-2

For the 2nd quarter, based on the Summary of Sales and Remittances,[43] sales invoice nos. 2228[44] and 2238[45] contain a gross amount of export sales of US$4,126,672.00 and US$4,708,958.00, respectively, or a total of US$8,835,630.00.

However, the invoices actually presented to this Court contain different amounts.

The sales invoices[46] presented, which are dated August 21, 2002 and November 4, 2002, bear the amounts of US$3,740,088.22 and US$3,740,343.71 or in the sum of US$7,480,431.93.

On perusal, the invoices with numbers 2218[47] and 2228[48] belong to the 3rd quarter of 2002, while invoice number 2238[49] refers to the 4th quarter of 2002. Thus, outside of the subject period of the petitioner's claim.

In summary, petitioner failed to substantiate its direct export sales of gold to England in the amounts of US$793,445.00 and US$416,157.00, and the sales of copper to Japan in the amounts of US$8,165,488.00 and US$8,835,630.00.

For petitioner's indirect export sales to PASAR, Section 106 (A)(2)(a)(5) of the NIRC of 1997, provides:

> "**Section 106.** *Value-added Tax on Sale of Goods or Properties.* —
>
> (A) xxx
>
> (1) 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:

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[42] Exhibits O-1-b and O-2-b
[43] Exhibit R
[44] Exhibit P-1
[45] Exhibit P-2
[46] Exhibits P-1 and P-2
[47] Exhibit O-2
[48] Exhibit P-1
[49] Exhibit P-2

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

xxx xxx xxx"

Further, sales by a VAT taxpayer from the Customs Territory to a PEZA entity are considered export sales under Executive Order (E.O.) No. 226, otherwise known as the Omnibus Investments Code of 1987, which reads as follows:

"**Article 23.** "Export Sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents: Provided, further, That without actual exportation the following shall be considered "constructively exported" for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones**; . . . " (Emphasis supplied)

"**Article 77.** *Tax Treatment of Merchandise in the Zone.* — (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) **Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exported thereof shall be entitled to the benefits allowed by law for such transaction.**" (Emphasis supplied)

Revenue Memorandum Circular No. 74-99 dated October 15, 1999 also provides:

"**Section 3.** *Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise.-*

xxx xxx xxx

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. **Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5) , NIRC , in relation to Art. 77(2) of the Omnibus Investments Code**, while all sales of services to the said enterprises, made by VAT registered supplies from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulation No. 7-95 effective as of the date of issuance of this Circular." (Emphasis supplied)

Clearly, indirect exports made by a VAT taxpayer to a PEZA registered entity are entitled to zero percent (0%) VAT rate.

Petitioner's indirect export sales to PASAR for the 1st and 2nd quarters of 2002 amounted to US$7,107,233.00 and US$7,494,309.00, respectively.

However, sales invoices forwarded to this Court covering petitioner's indirect exports to PASAR for the 1st quarter of 2002 in the amount of US$3,631,883.00, and for the 2nd quarter amounting to US$7,494,309.00, fall outside the subject period of claim. Hence, cannot qualify for VAT zero-rating.

Considering that only the export sales amounting to US$3,475,350.00 with supporting invoice no. 2214 dated May 28, 2002 qualify as zero-rated sales, petitioner is not liable to pay any output VAT thereon.

To summarize, out of the US$16,117,673.00 claim for the 1st quarter of 2002, only the amount of US$3,475,350.00 export sales with peso equivalent of P178,455,852.46 shall be subjected to VAT zero-rating. While for the 2nd quarter, petitioner failed to prove that its reported direct and indirect export sales in the amount of P868,807,891.03 with US dollar equivalent of $17,320,815.00 qualifies for VAT zero-rating.

Input VAT must be incurred

For the 1st quarter of 2002, the Independent CPA noted the following findings on petitioner's input VAT on domestic purchases, viz:[50]

	Particulars	Reference	Amount
1	Supported by VAT Official Receipts in the name of the company	Page 1 of Exhibit U	P 63,985.06
2	Supporting VAT Official Receipts not in the company's name	Page 1 of Exhibit U	2,035.04
3	Supported by Non-VAT Receipts	Page 2 of Exhibit U	44,570.73
4	No Supporting VAT Official Receipt presented	Page 5 of Exhibit U	139,171.18
5	Non-VAT Invoice	Page 5 of Exhibit U	80.00
6	No Supporting VAT Invoice presented	Page 5 of Exhibit U	194.36
	TOTAL		**P 250,036.37**

The sum of items 2 to 6 amounting to P186,051.31 should be disallowed for reasons stated above. Likewise, a portion of item 1 amounting to P9,057.61 are disallowed for the supporting VAT Official Receipts fall outside the period of claim.

From the total input VAT of P250,036.37, only the amount of P54,927.45 was duly substantiated.

However, albeit petitioner was able to substantiate its domestic purchases of goods and services of P54,927.45 with VAT official receipts, such is not entirely allowed as input tax credit.

[50] Exhibit N

Pursuant to Revenue Memorandum Order No. 9-00 dated March 29, 2000, sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, thus:

> "**Section 3.** Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
>
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

The records disclosed that petitioner was issued a certification by the BOI attesting that petitioner is a BOI registered entity with 100% exports. The Certification was valid for the period January 1, 2002 to December 31, 2002 as confirmed in the case of **GST Philippines, Inc. vs. Commissioner of Internal Revenue**,[51] to wit:

> "In compliance xxx, petitioner submitted Certifications issued by the BOI for Philex Mining, Philex Gold and Lepanto Mining attesting that

[51] CTA Case No. 6489, August 7, 2007

> these companies are registered with the Board of Investments. In the same manner, it can be gleaned from the Certifications that the BOI companies exported 100% of their products for taxable years 2001 and 2002. xxx."

In addition, petitioner presented the said BOI Certification as evidence of its zero-rated sales on its previous case entitled **Philex Mining Corporation vs. Commissioner of Internal Revenue.**[52]

Under Section 3.4 of RMO 9-00, the Certification shall serve as authority for the local suppliers of a BOI registered buyer to avail of the benefits of zero-rating on their sales.

On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner.

Hence, on the absence of clear and convincing proof that local suppliers passed on or shifted the VAT on its domestic purchases, petitioner cannot claim the amount of P54,927.45, as input tax credits for the period from January 1, 2002 to March 31, 2002.

As for the input VAT payment of P2,630,769.00 on petitioner's importations, only the amount of P221,214.00 is a valid claim. It was directly paid to the Bureau of Customs and is duly covered by official receipts. Thus, computed as follows:

Items Imported	**Exhibit No.**	**Input VAT**
Alvenius Pipes	S-10	P 38,143.00
30 drums driwax	S-21	53,762.00
DK Froth - BP3	S-22	129,309.00
Total		**P 221,214.00**

The remaining amount of P2,409,555.00 shall be disallowed for the Import Entry and Internal Revenue Declarations[53] supporting such importations were not admitted by this

[52] CTA Case No. 6828, April 25, 2008.
[53] Exhibits S-1a to S-23a

Court for failure of the petitioner to present the originals.[54] Likewise, the Bank Debit Advices[55] are inadmissible since these do not indicate the actual input VAT payments.

Other than the above, no official receipts or additional documents proving actual payment of VAT on the imported goods were presented to support such claim. Without any other support, petitioner's claimed input VAT payments in the amount of P2,409,555.00 cannot be granted.

The accumulated or excess input VAT was not utilized or applied against output VAT.

The Quarterly VAT Returns[56] for the 1st quarter of 2002 showed that petitioner had a taxable sales in the amount of P638,842.80 with the related output tax liability of P63,884.28.

After having removed such output tax from the substantiated input VAT of P221,214.00, there remained an excess amount of P157,329.72 representing input VAT attributable to petitioner's zero-rated sales of P824,524,842.84.

Consequently, only the input VAT of P34,051.62 can be attributed to petitioner's substantiated zero-rated sales of P178,455,852.46. Thus, computed as follows:

Zero-rated Sales	P 178,455,852.46
Divided by Total Reported Zero-Rated Sales	÷ 824,524,842.84
Multiplied by Substantiated Excess Input VAT	× 157,329.72
Input VAT attributable to Substantiated Zero-Rated Sales	**P 34,051.62**

As evidenced by its Quarterly VAT Returns[57] from 2nd quarter of 2002 to 2nd quarter of 2004, petitioner was able to prove that the input VAT of P34,051.62 was not applied against any output VAT in the succeeding quarters.

[54] Resolution dated March 23, 2007, Page 240, CTA Records
[55] Exhibits S-1 to S-9, S-11 to S-20, and S-23
[56] Exhibits B and B-1
[57] Exhibits W-2 to W-10

As a result, petitioner's claim for refund of its unutilized input VAT for the 1st quarter of 2002 is hereby granted, however, in the reduced amount of P34,051.62; while the claim for refund of its unutilized input VAT for the 2nd quarter of the same taxable year is hereby denied.

WHEREFORE, this Court hereby **PARTIALLY GRANTS** the instant Petition for Review. Respondent is hereby **ORDERED** to **REFUND** the amount of THIRTY FOUR THOUSAND FIFTY ONE PESOS & 62/100 **(P34,051.62)** representing its unutilized input Value Added Tax for the 1st quarter of 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division