REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

PHILEX MINING CORPORATION
Respondent.

CTA *EB* NO. 1296
(CTA Case Nos. 7933 & 7968)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

JUL 21 2016 2:38 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court *En Banc* is a Petition for Review[1] under *Section 4(b)*[2], *Rule 8 of the Revised Rules of the Court of Tax Appeals* ("RRCTA") seeking to reverse the Amended Decision[3] ("Assailed Decision") of

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[1] *Rollo, CTA EB Case No. 1296*, pp. 5-37, with annexes.

[2] "SECTION 4. *Where to Appeal; Mode of Appeal.* — xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal."

[3] *Records, CTA Case Nos. 7933 & 7968, Assailed Decision*, pp. 386-398; penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla concurring.

the Special Second Division of the Court ("Court in Division") dated January 21, 2015, as well as the Resolution[4] ("Assailed Resolution") dated March 25, 2015.[8]

The Parties[9]

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

Respondent Philex Mining Corporation ("PMC") is a domestic corporation engaged in the business of mining that includes exploration, development, and operation of mining properties for commercial production, and the marketing of mine products. PMC is Value-Added Tax ("VAT")-registered as evidenced by its VAT Registration Certificate No. 35-6-000731 effective October 29, 1997, and BIR Form No. 2303 as of January 31, 1997. It also has a duly approved Application for Zero-Rating, pursuant to *Section 4.100-3 of Revenue Regulations ("RR") No. 7-95*. Its principal office is located at Brixton corner Fairlane Streets, Pasig City.

The Facts

As stated in the original Decision[10] dated September 22, 2014, the factual antecedents of this case are as follows:

> [PMC] filed its original Quarterly VAT Return for the second quarter of 2007 on July 24, 2007. Then, it filed an amended Quarterly VAT Return on June 23, 2008, which reflected total zero-rated sales of [Php]3,336,877,804.52, importation of goods of [Php]149,885,075.00 with input tax of [Php]17,986,209.00, and purchases of services in the amount of [Php]3,550,949.42 with input tax of [Php]426,112.93.

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[4] *Records, Assailed Resolution,* pp. 415-419.
[8] *Rollo,* p. 6.
[9] *Records, Decision,* pp. 345-365; penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla concurring.
[10] *Id.*, pp. 346-355.

[PMC] filed its original Quarterly VAT Return for the third quarter of 2007 on October 23, 2007. Subsequently, it filed an amended return on June 23, 2008, which reflected total zero-rated sales of [Php]3,322,807,460.21, importation of goods of [Php]169,237,058.34 with input tax of [Php]20,312,767.00, and purchases of services of [Php]3,745,108.00 with input tax of [Php]449,412.96, and domestic purchases of goods of [Php]9,037,481.00 with input tax of [Php]1,084,497.72.

Pursuant to *Section 4.112-1 of [RR] No. 16-2005*, [PMC] filed its claim for refund/tax credit with the One-Stop-Shop Center of the Department of Finance on June 15, 2009, *per* Application No. 52743 for the amount [Php]18,412,322.93 for the second quarter of 2007, and *per* Application No. 52742 for the amount of [Php]21,846,677.68 for the third quarter of 2007.

Since [the CIR] failed to resolve [PMC's] claim for refund, [PMC] appealed before the Court [in Division] *via* [] Petitions for Review docketed as CTA Case Nos. 7933 and 7968 filed on June 19, 2009 and September 8, 2009, respectively.

On August 10, 2009, [the CIR] filed her Answer in CTA Case No. 7933, raising the following Special and Affirmative Defenses:

> "5. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 6. [PMC's] claim for tax refund is subject to administrative investigation/examination by [the BIR].
>
> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.
>
> 8. Moreover, in order to validly claim for tax refund, it is imperative for [PMC] to prove its compliance with the following, *viz*[.]:
>
>> a. The registration requirements of a [VAT] taxpayer under the pertinent provision of the *1997 National Internal Revenue Code, as amended [("1997 NIRC")], and its implementing [RRs].*

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 1997 NIRC*. 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 [("RMC")] 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 [1997 NIRC]*, 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.

d. That the input taxes of [Php]18,412,322.93 allegedly representing unutilized input VAT from its purchases of goods and services attributed/allocated to its export sales, were:

i. paid by [PMC];

ii. attributable to its zero-rated or effectively zero-rated sales; and

iii. such input taxes paid should not have been applied against any output tax.

e. That [PMC's] claim for tax refund allegedly representing unutilized input VAT in the amount of [Php]18,412,322.93 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 [1997 NIRC].*
>
> 9. In an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.
>
> 10. 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 (*Philippine Geothermal, Inc. [v.] Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005*). 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 (*Sea-Land Service, Inc. [v.] Court of Appeals, 357 SCRA 444*)."

On October 1, 2009, [the CIR] likewise filed an Answer in CTA Case No. 7968, alleging by way of Special and Affirmative Defenses that:

> "5. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 6. [PMC's] claim for tax refund is subject to administrative routinary investigation/ examination by [the CIR].
>
> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.
>
> 8. Moreover, in order to validly claim for tax refund, it is imperative for [PMC] to prove its compliance with the following, *viz*[.]:
>
> > a. The registration requirements of a [VAT] taxpayer under the pertinent provision of the *[1997 NIRC], and its implementing [RRs].*

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 [1997 NIRC]*. 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 [*RMC] 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 [1997 NIRC]*, 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.

d. That the input taxes of [Php]21,846,677.68 allegedly representing unutilized input VAT from its purchases of imported goods and domestic goods and services attributed/allocated to its export sales, were:

i. paid by [PMC];

ii. attributable to its zero-rated or effectively zero-rated sales; and

iii. such input taxes paid should not have been applied against any output tax.

e. That [PMC's] claim for tax refund allegedly representing unutilized input VAT in the amount of [Php]21,846,677.68 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 [1997 NIRC]*.
>
> 9. Furthermore, in an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.
>
> 10. 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 (*Philippine Geothermal, Inc. [v.] Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005*). 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 (*Sea-Land Service, Inc. [v.] Court of Appeals, 357 SCRA 444*)."

The parties filed their Stipulation of Facts and Issues on October 16, 2009, which was approved by [the Court in Division] in a Resolution dated October 23, 2009 for CTA Case No. 7933. The parties likewise filed their Stipulation of Facts and Issues for CTA Case No. 7968 on October 23, 2009, which was approved by [the Court in Division] in a Resolution dated October 29, 2009. Thereafter, the pre-trial was terminated and the parties were ordered to proceed with the trial on the merits.

On January 25, 2010, [PMC] filed a Motion to Consolidate CTA Case No. 7933 with CTA Case No. 7968, considering that both cases involve the same causes of action, the same issues, the same witnesses, and the same documentary evidence. The only difference between CTA Case No. 7933 and CTA Case No. 7968 is that the former covers its claim for VAT refund for the second quarter of 2007 while the latter involves its claim for VAT refund for the third quarter of 2007. [The Court in Division] granted the motion for consolidation in a Resolution dated January 27, 2010.

[PMC] filed its Formal Offer of Evidence on April 16, 2010, offering Exhibits "A" to "P," inclusive of their sub-markings. In a Resolution dated June 3, 2010, the Court admitted Exhibits "A" to "C-3[,"] "D" to "H-26[,"] "J" to "J-178[,"] "L" to "L-10[,"] "N-1" to "N-16[,"] and "P." However, Exhibit "C-4" was denied admission for failure of [PMC] to mark and identify the same in Court.

On the other hand, [the CIR] manifested that he has no documentary evidence to be marked and no witness to be presented.

During the hearing on July 26, 2010, the parties were granted a period of thirty (30) days from July 26, 2010 or until August 25, 2010 to file their Memoranda.

On September 3, 2010, the case was ordered submitted for decision after [PMC] submitted its Memorandum on August 10, 2010, *sans* [the CIR's] Memorandum.

A Decision[12] was rendered on March 17, 2011 denying [PMC's] Petition for Review for having been prematurely filed, which was sustained in a Resolution[13] on May 11, 2011.

On June 7, 2011, PMC filed an appeal before the CTA *En Banc*, *via* Petition for Review docketed as CTA *EB* No. 787.[14]

The CTA *En Banc* issued a Decision[15] on September 24, 2012 denying the Petition for Review, thus, upholding the March 17, 2011 Decision and the May 11, 2011 Resolution of the Court in Division.

On October 22, 2012, PMC filed a Motion for Reconsideration[18] of the September 24, 2012 Decision.

The CTA *En Banc* issued an Amended Decision[19] on May 28, 2013 ("Amended Decision") which granted PMC's Motion for Reconsideration; reversed and set aside the March 17, 2011 Decision and the May 11, 2011 Resolution of the Court in Division; and remanded the consolidated cases of CTA Case Nos. 7933 and 7968 to the Court in Division for a complete determination of PMC's

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[12] *Records, March 17, 2011 Decision*, pp. 130-143.
[13] *Id., May 11, 2011 Resolution*, pp. 164-167.
[14] *Id., CTA EB No. 787 Petition for Review*, pp. 170-211, with annexes.
[15] *Id., CTA EB No. 787 Decision*, pp. 236-265, with Dissenting Opinion of Associate Justice Lovell R. Bautista.
[18] *Id., CTA EB No. 787 Petitioner's MR*, pp. 268-276.
[19] *Id., CTA EB No. 787 Amended Decision*, pp. 294-301.

compliance with other legal requirements in relation with its subject claim for refund or tax credit of its alleged unutilized input VAT for the second and third quarters of taxable year 2007.

Despite the Motion for Reconsideration (RE: Amended Decision promulgated May 28, 2013)[20] filed by respondent, the Amended Decision was thereafter upheld by the CTA *En Banc* in a Resolution[21] on October 1, 2013.

Since no appeal was taken to the Supreme Court, the CTA *En Banc*, in its Resolution[22] dated February 3, 2014, declared that the Amended Decision promulgated on May 28, 2013 has become final and executory; and accordingly ordered the issuance of Entry of Judgment. As a result, the Entry of Judgment[23] was issued on March 1, 2014.

However, the Entry of Judgment was based on the Resolution dated February 3, 2014 and not on the Amended Decision dated May 28, 2013.[24] Consequently, the Court in Division issued a Resolution[25] on March 27, 2014, that the Entry of Judgment should have quoted the dispositive portion of the Amended Decision and not the February 3, 2014 Resolution. As such, the Court in Division directed the Executive Clerk of Court IV to amend the Entry of Judgment before it can act on the remand of the consolidated cases.[26] On April 2, 2014, the Amended Entry of Judgment[27] was issued stating that on June 20, 2013, the Amended Decision has become final and executory.

On April 23, 2014, the Court issued a Resolution[28] setting the instant case for presentation of PMC's additional evidence on May 26, 2014. However, in *lieu* of a hearing on May 26, 2014, PMC filed a Manifestation and Motion[29] praying that the hearing be cancelled and that the case be considered submitted for decision. Accordingly, the Court in Division granted its motion in a Resolution[30] on May 20, 2014.

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[20] *Records, CTA EB No. 787 Respondent's MR*, pp. 305-310.
[21] *Id., CTA EB No. 787 Resolution*, pp. 316-323.
[22] *Id.*, pp. 325-326.
[23] *Id., CTA EB No. 787 Entry of Judgment*, pp. 327-328.
[24] *Id.*, pp. 330-331.
[25] *Id.*
[26] *Records*, pp. 330-331.
[27] *Id., CTA EB No. 787 Amended Entry of Judgment*, pp. 332-333.
[28] *Id.*, pp. 335-336.
[29] *Id.*, pp. 337-339.
[30] *Id.*, p. 341.

On September 22, 2014, the Court in Division issued a Decision[31], denying PMC's claim for refund of its alleged unutilized input VAT paid on purchases of goods and services attributable to zero-rated sales during the second and third quarters of taxable year 2007 in the total amount of [Php]40,259,000.61. The *fallo* states:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**

In denying the Petition for Review, the Court in Division, in part, said:[32]

> Pursuant to *Section 106(A)(2)(a)(1) of the [1997 NIRC]*, 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 [RR] No. 16-05*, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:
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> 1. sales invoice as proof of sale of goods;
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> 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
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> 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.
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> 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 [1997 NIRC]*.
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> xxx xxx xxx

[31] *Records, Decision,* pp. 345-365.
[32] *Id.,* pp. 362-364.

In the instant case, the fact that [PMC] is VAT-registered is not disputed. Pursuant to its Long Term Gold and Copper Concentrate Sales Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan, for the period covering the second and third quarters of 2007, [PMC] actually shipped mineral products and generated sales in the amount of [USD]72,171,652.00 and [USD]72,666,701.00 for the second and third quarters of 2007, respectively, as shown in [PMC's] Schedule of Export Sales, which are duly substantiated by provisional invoices, final invoices, bills of lading, and export declarations.

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[PMC] failed however to comply with the equally significant third requisite, *viz.*, the existence of 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 order for it to claim VAT zero-rated direct export sales.

In her Consolidated Report, the Independent CPA found that [PMC] received payments in [USD] through the banking system in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas [("BSP")]. The Independent CPA, as shown in her Report, accounted the inward remittances that allegedly correspond to the export sales taking in consideration [PMC's] beginning and ending receivables, repayment of loan, and bank charges, summarized as follows:

PARTICULARS	2nd Quarter (in [USD])	3rd Quarter (in [USD])	Total (in [USD])
Gross Sales per Schedule of Sales and Remittance	72,171,652.00	72,666,701.00	144,838,353.00
Catch-up and Marketing Adjustments/Reversals	(4,782,510.00)	(4,395,498.00)	(9,178,008.00)
Net Sales	67,389,142.00	68,271,203.00	135,660,345.00
Receivables:			0.00
At beginning of quarter	20,697,645.00	22,588,226.00	43,285,871.00
At end of quarter	(22,588,226.00)	(45,071,084.00)	(67,659,310.00)
Repayment of Loan Payable to			0.00
Pan Pacific Cooper Co., Ltd.	(1,049,300.00)	(1,053,331.00)	(2,102,631.00)
Gross Remittances	64,449,261.00	44,735,014.00	109,184,275.00
Bank charges	(241.00)	(22.00)	(263.00)
Remittances per Bank certificates	64,449,020.00	44,734,992.00	109,184,012.00
Unexplained Difference	0.00	424.00	424.00
Remittance per Passbook Entries	**64,449,020.00**	**44,735,416.00**	**109,184,436.00**

The Independent CPA stated in her Report that the remittances received are substantiated by original copies of certificates of remittances in the name of [PMC] and entries in the passbooks of local banks, particularly, Philippine National Bank, Banco de Oro, Land Bank of the Philippines, Bank of Commerce, and Union Bank of the Philippines.

> A perusal of the records shows, however, that [PMC] failed to submit the relevant documents necessary to substantiate its alleged receivables, repayment of loan payable, and bank charges. Moreover, based on records, it cannot be ascertained whether such remittances actually pertained to the alleged zero-rated sales of [PMC] for the period covered by the present claim. Therefore, the veracity of the Reconciliation Report by the Independent CPA cannot be verified.
>
> Considering the failure of [PMC] to submit or present the above-enumerated documents, [it] failed to prove that it engaged in zero-rated or effectively zero-rated sales. Hence, there is no need for the Court to discuss the remaining requisites under *Section 112(A) of the [1997 NIRC]*, because there is no zero-rated or effectively zero-rated sale to speak of.

Unsatisfied with the Decision, on October 7, 2014, PMC filed a Motion for Reconsideration (Re: Decision Rendered on September 22, 2014)[34] and asserted that it submitted the following documents: *(1)* certificates of inward remittances issued by local banks through which the remittance of the net foreign exchange proceeds of PMC's export sales of its mineral products were coursed; and *(2)* bank passbooks showing the crediting of the net foreign exchange remittances to the bank accounts of PMC; that the remittances covered by the aforementioned documents actually pertained to its zero-rated sales for the periods covered by the present claim; and that the zero-rated sales can be determined by analyzing the bank certifications in relation to the Provisional/Final Sales Invoices, as summarized in the Schedule of Sales and Remittances in the Independent CPA Report.

The CIR filed her Comment[36] to the Motion for Reconsideration (Re: Decision Rendered on September 22, 2014)[37] on October 22, 2014.

On January 21, 2015, the Court in Division issued the Assailed Decision[38] which partially granted the Motion for Reconsideration (Re: Decision Rendered on September 22, 2014). The dispositive portion reads:[40]

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[34] *Records,* pp. 366-377.
[36] *Id.,* pp. 380-381.
[37] *Id.,* pp. 366-377.
[38] *Id., Assailed Decision,* pp. 386-398.
[40] *Id., Assailed Decision,* p. 397.

> **WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund be issued in favor of [PMC] in the amount of [Php]7,194,587.11, representing its unutilized excess input VAT attributable to its zero-rated sales for the second and third quarters of 2007.
>
> **SO ORDERED.**

In the Assailed Decision, the Court in Division ruled that the evidence submitted *i.e.*, certificate of inward remittances (*Exhibits* "F," "F-1" to "F-10") and pages of the bank passbooks (*Exhibits* "F-1-a" to "F-11-a"), were sufficient to satisfy the third requisite of *RR No. 16-2005*.

The Court in Division further found that the remittances covered by the bank certifications and its corresponding entries in the passbooks actually pertain to zero-rated sales of PMC for the period covered by its claim. These were supported by the bank certifications submitted in relation to the Provisional/Final Sales Invoices, as summarized in the Schedule of Sales and Remittances in the Independent CPA Report.

On February 5, 2015, the CIR filed a Motion for Partial Reconsideration[42], which was denied for lack of merit by the Court in Division in the Assailed Resolution[43] dated March 25, 2015.

Aggrieved, on April 20, 2015, the CIR filed a Motion for Extension of Time to File Petition for Review[44] with the CTA *En Banc* requesting for an extension of fifteen (15) days from April 21, 2015 within which to file her Petition for Review, which the Court *En Banc* granted in a Minute Resolution[45] dated April 27, 2015.

Thus, on May 6, 2015, the CIR filed by registered mail the instant Petition for Review.[46]

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[42] *Records*, pp. 399-404.
[43] *Id.*, *Assailed Resolution*, pp. 415-419.
[44] *Rollo, CTA EB No. 1296*, pp. 1-3.
[45] *Id.*, p. 4.
[46] *Id.*, *Petition for Review*, pp. 5-37, with annexes.

On June 4, 2015, the Court *En Banc* issued a Resolution[47] directing the CIR to submit an Affidavit of Service to prove that PMC was served a copy of the Petition for Review in accordance with *Section 13, Rule 13 of the 1997 Rules of Civil Procedure*, within ten (10) days from receipt thereof. In compliance therewith, the CIR submitted her Compliance with the attached Affidavit of Service on July 3, 2015.[49]

The CTA *En Banc* thereafter issued a Resolution[50] dated July 28, 2015, which ordered PMC to file its Comment to the Petition for Review, and not a Motion to Dismiss, within ten (10) days from receipt thereof.

PMC filed its Comment[51] to the Petition for Review on August 13, 2015.

On September 11, 2015, the Court *En Banc* issued a Resolution[52] submitting the case for decision, hence, this Decision.

The Issues[53]

The CIR raises two (2) grounds for her Petition for Review:

WHETHER OR NOT PMC FAILED TO COMPLY WITH THE THIRD REQUISITE OF RR NO. 16-2005, *I.E.*, THE NON-SUBMISSION OF BANK CREDIT ADVICE, CERTIFICATE OF BANK REMITTANCE, OR ANY OTHER DOCUMENT EVIDENCING PAYMENT FOR THE GOODS IN ACCEPTABLE FOREIGN CURRENCY OR ITS EQUIVALENT IN GOODS AND SERVICES, IN ORDER FOR PMC TO CLAIM VAT ZERO-RATED DIRECT EXPORT SALES; and

WHETHER OR NOT THE COURT IN DIVISION ERRED WHEN IT PARTIALLY GRANTED PMC'S CLAIM FOR TAX REFUND OR CREDIT OF ALLEGED

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[47] *Rollo*, pp. 39-41.
[49] *Id.*, pp. 42-44.
[50] *Id.*, pp. 46-47.
[51] *Id.*, pp. 48-55.
[52] *Id.*, pp. 57-58.
[53] *Id.*, pp. 57-58.

UNUTILIZED INPUT VAT FOR THE SECOND AND THIRD QUARTERS OF TAXABLE YEAR 2007.

The Arguments of the CIR

According to the CIR, the Court in Division erred twice in the *Assailed Decision* dated January 21, 2015, to wit: *(1)* when it ruled that the evidence submitted by PMC, particularly the certificate of inward remittances and pages of the bank passbooks, in relation to the Provisional/Final Sales Invoices were sufficient to satisfy the third requisite of *RR No. 16-2005;* and *(2)* when it ruled to partially grant PMC's claim for tax refund or credit of alleged unutilized input VAT for the second and third quarters of taxable year 2007.

Concerning the first instance, the CIR alleges that PMC failed to comply with the third requisite of *RR No. 16-2005, viz.*, the existence of 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 order for it to claim VAT zero-rated direct export sales;[54] that PMC failed to submit or present relevant documents to substantiate its alleged receivables, payment of loan payable, and bank charges; that due to PMC's failure to submit the aforementioned documents, she cannot determine whether the remittances actually pertained to the alleged zero-rated sales for the quarters covered in the present claim;[55] and that PMC failed to comply with the conditions or requirements during an audit/verification of administrative claims, in accordance with *Item III RMC No. 29-2009*[57].

In view of the foregoing allegations, it is the CIR's position that the Court *En Banc* order the reversal of the January 21, 2015 Assailed Decision and the March 25, 2015 Assailed Resolution.

The Arguments of PMC

Three major points were invoked by PMC to controvert the CIR's allegations, *viz.*: *(1)* that it presented *Exhibits* "F," "F-1" to "F-11," "F-1-a" to "F-11-a," which are the former's certificate of inward

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[54] *Rollo*, p. 9.
[55] *Id.*
[57] Clarifying Certain Issues Relative to the Processing of Claims for Tax Credit/Refund, April 16, 2009.

remittances issued by local banks and pages of the passbooks, as proof that its export sales were paid in USD and in accordance with the BSP rules;[58] *(2)* that it complied with *Section 106(A)(2)(a)(1) of the 1997 NIRC* which provides the requirements and conditions for export sales to qualify as zero-rated, in connection with the Court in Division's Decision dated September 22, 2014;[59] and *(3)* that based on the CTA *En Banc* case entitled *Commissioner of Internal Revenue v. Philex Mining Corporation ("Philex Case")*[60], the question of whether or not the evidence submitted by a party is sufficient to warrant the grant of the claim for refund lies within the sound judgment of the Court.[61]

First, PMC emphasizes that it presented and submitted two (2) evidence which prove that its export sales were paid in USD, an acceptable foreign currency, and accounted for in accordance with the BSP rules, *to wit*: *(1) Exhibits* "F," "F-1" to "F-11" are certificates of inward remittances issued by local banks through which the remittances of the net foreign exchange proceeds of its exports sales of its mineral products were coursed; and *(2) Exhibits* "F-1-a" to "F-11-a" are pages of the passbooks showing the crediting of the next foreign exchange remittances to the bank accounts of PMC in local banks.

Second, *Section 106(A)(2)(a)(1) of the 1997 NIRC* provides the requirements and conditions for export sales to qualify as zero-rated. It is PMC' position that documents *i.e.*, receivables, payment of loan payable, and bank charges required by the CIR are not one of the conditions set forth in *Section 106(A)(2)(a)(1) of the 1997 NIRC* and the Decision dated September 22, 2014.

Finally, PMC invokes the *Philex Case* against Commissioner's allegation that the Court in Division in the Assailed Decision should have denied the former's claim for refund or credit as prescribed by *RMC No. 29-2009*. In the *Philex Case*, the CTA *En Banc* ruled that "[t]he question of whether or not the evidence submitted by a party is sufficient to warrant the granting of the claim for refund lies within the sound discretion of the Court."

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[58] *Rollo*, p. 49.
[59] *Id.*, pp. 49-50.
[60] CTA *EB* No. 1116 (CTA Case No. 8424), January 7, 2015.
[61] *Rollo*, p. 54.

In view of the foregoing major points, PMC prays that the Court *En Banc* deny the instant Petition for Review.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the Petition for Review.

In the *Assailed Decision*[64], the Court in Division unanimously ruled as follows:

> In support of its motion, [PMC] illustrates an example to prove that the remittances it received actually pertain to the zero-rated sales for the period covered by the present claim, *to wit*:
>
> xxx xxx xxx
>
> After careful re-evaluation of the foregoing arguments, the [Court in Division] finds [PMC's] arguments meritorious.
>
> Based on [PMC's] Schedule of Export Sales and the supporting Provisional and Final Invoices, the zero-rated sales in the amount[s] of [USD]72,171,652.00 and [USD]72,666,701.00 for the second and third quarters of 2007 may be broken down as follows:
>
> xxx xxx xxx
>
> Based on the Schedule of Sales and Remittances together with the foregoing explanation of [PMC], ninety percent (90%) of the export sales per Provisional Invoices for the second and third quarters of 2007 shipments, after deducting the alleged treatment charges, corresponds to the inward remittances received by [PMC]. However, for Provisional Invoice Nos. 2511 and 2512 with Final Invoice Nos. 2523 and 2525, respectively, no inward remittance has been received. Thus, the same remained as collectible or receivable at the end of the third quarter of 2007.
>
> It is noteworthy that [PMC] did not submit any documentary evidence to support its alleged treatment charges and that the remaining receivables were subsequently collected and accounted for in acceptable foreign currency.

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[64] *Rollo*, pp. 16-28.

Hence these items shall be disregarded in computing the correct amount of [PMC's] zero-rated sales.

Out of the 90% Provisional Drawing in the total amount of [USD]112,453,074.27 for the second and third quarter's shipments only the amount of [USD]82,099,483.00 had the corresponding inward remittance, computed as follows:

xxx xxx xxx

With regard to the Catch-up Adjustments to Prior Quarter's Shipments for the second and third quarters of 2007, only the payments for Provisional Invoice Nos. 2487, 2490, 2491, 2492, 2495, 2497, 2496 and 2501 with the respective Final Invoice Nos. 2498, 2499, 2502, 2500, 2504, 2515, 2507 and 2510, were inwardly remitted. For the Catch-up Adjustments pertaining to Provisional Invoice Nos. 2503, 2505 and 2506, with Final Invoice Nos. 2513, 2514 and 2516, respectively, no corresponding inward remittances were made. Thus:

xxx xxx xxx

Consequently, the amount of [USD]52,492,021.00, representing the difference between export sales as recorded in the General Ledger and the corresponding inward remittances for the second and third quarters' shipments, shall be disallowed as zero-rated sales, as determined below:

xxx xxx xxx

Accordingly, [PMC's] export sales for the second and third quarters of 2007 with the net adjusted amount of [USD]60,405,659.00 and [USD]31,940,673.00, respectively, qualify for VAT zero-rating. The said amounts are computed below:

xxx xxx xxx

After resolving that [PMC] had VAT zero-rated sales for the second and third quarters of 2007 in the total amount of [USD]92,346,332.00, the Court [in Division] proceeds to determine whether [PMC] incurred or paid input taxes in connection thereto and if said input taxes were not applied against any output VAT liability of [PMC].

[PMC's] Quarterly VAT Return for the second and third quarters of 2007 reflected an input VAT of [Php]38,298,976.00 on importations of goods other than capital goods,

[Php]1,084,497.72 on domestic purchase of goods other than capital goods and [Php]875,526.89 on domestic purchases of services or in the total input VAT amount of [Php]40,259,000.61, as shown below:

xxx xxx xxx

To determine the accuracy of [PMC's] declaration, the Independent CPA examined the voluminous documents of [PMC] in support of its claim for refund. In her Report, the Independent CPA found the following:

xxx xxx xxx

Based on the above findings, [PMC's] claim in the amount of [Php]23,891,001.31 shall be disallowed for the reasons stated below:

xxx xxx xxx

Upon further review of the Independent CPA's Report, together with [PMC's] supporting documents, the Court [in Division] finds that the input taxes in the amount of [Php]475,407.10 should be disallowed from [PMC's] claim due to its failure to substantiate the same by VAT invoices or receipts as prescribed under *Sections 110(A), 113(A) and (B), 237 and 238 of the [1997 NIRC]*, in relation to *Sections 4.110-1, 4.110-8 and 4.113-1 of [RR] No. 16-05*, as amended. Below is the breakdown of the input taxes of [Php]475,407.10:

xxx xxx xxx

Out of [PMC's] reported input VAT for the second and third quarters of 2007 in the amount of [Php]40,259,000.61 only the amount of [Php]19,540,776.16 represents [PMC's] valid input tax for the second and third quarters of 2007, tabulated hereunder:

xxx xxx xxx

However, a portion of the [Php]15,892,592.20 input VAT shall be applied against [PMC's] reported output VAT liability for the second and third quarters of 2007 in the amount of [Php]1,561,527.38 and [Php]3,214.29, respectively. As a result, for the second and third quarters of 2007, only the remaining input VAT of [Php]14,327,850.53 can be attributed to the entire zero-rated sales declared by [PMC] in the amount of [Php]6,659,685,264.73 (with US dollar equivalent of

> [USD]144,838,353.00) and only the input VAT of [Php]7,194,587.11 is attributable to the valid zero-rated sales of [Php]4,253,414,760.14 (with US dollar equivalent of [USD]92,346,332.00), as computed below:
>
> xxx xxx xxx
>
> While the claimed input VAT was carried over by [PMC] in its succeeding Quarterly VAT Returns from the fourth quarter of 2007 to the first quarter of 2009, the same remained unutilized since it was deducted in its Quarterly VAT Return for the second quarter of 2009, as "VAT Refund/TCC claimed" from the total available input tax of [Php]131,070,431.13. In other words, the claimed input taxes for the second and third quarters of 2007 could not have been carried over or utilized in the succeeding third quarter of 2009.
>
> In sum, the Court finds [PMC] entitled to a refund in the reduced amount of [Php]7,194,587.11, representing its unutilized excess input VAT attributable to its zero-rated sales for the second and third quarters of 2007.

The Court in Division correctly ruled that PMC complied with the third requisite of RR No. 16-2005.

The CIR avers that PMC failed to comply with the third requisite *of RR No. 16-2005, i.e.,* the non-submission of bank credit advice, certificate of bank remittance, or any other document evidencing payment for the goods in acceptable foreign currency or its equivalent in goods and services.

It is the Court *En Banc's* position that the CIR's aversion is an aversion with no leg to stand on.

For ease of reference, the following are the provisions of the *1997 NIRC* and *RR No. 16-2005* applicable to the instant case:

> 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);

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

(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;

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;

From the afore-quoted provisions, 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.[65]

The crux of the present controversy is the third requisite of *RR No. 16-2005, i.e.,* 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 the instant case, the Court *En Banc* noted from the Decision dated September 24, 2012 two (2) findings of the Independent CPA, *viz.*: *(1)* that "PMC received payments in US dollars through the banking system in accordance with the rules and regulations of the [BSP]"[66]; and *(2)* that the remittances received are substantiated by original copies of certificates of remittances in the name of PMC and entries in the passbooks of local banks."[67] Clearly, from the Decision, the Court in Division identified the existence of the aforementioned documents - documents referred to by the third requisite of RR No. 16-2009.

The Court *En Banc* further noted that the Court in Division in the Assailed Decision and the Assailed Resolution dated January 21, 2015 and March 25, 2015, respectively, extensively discussed and ruled that the Exhibits pertaining to PMC's certificate of inward remittances issued by local banks and pages of the passbooks, namely: *Exhibits* "F," "F-1" to "F-11," "F-1-a" to "F-11-a" were sufficient to satisfy the aforementioned RR.

The Court *En Banc* quotes from the Court in Division's Resolution dated March 25, 2015:

[65] *Rollo*, p. 362.
[66] *Records*, p. 363.
[67] *Id.*, p. 364.

> A perusal of the grounds relied upon in [the CIR's] Motion for Partial Reconsideration readily reveals that the first issue and argument had already been sufficiently passed upon and adequately discussed in the [Assailed Decision] dated January 21, 2015.
>
> In the [Assailed Decision], the Court [in Division] has ruled that the evidence submitted therein, particularly the certificate of inward remittances (*Exhibit* "F," "F-1" to "F-10") and pages of the bank passbooks (*Exhibits* "F-1-a" to "F-11-a"), were sufficient to satisfy the third requisite of *[RR] No. 16-2005.*
>
> Moreover, the Court [in Division] found that the remittances covered by the bank certifications and its corresponding entries in the passbooks actually pertain to zero-rated sales of petitioner for the period covered by its claim. These were supported by the bank certifications submitted in relation to the Provisional/Final Sales Invoices, as summarized in the Schedule of Sales and Remittances in the Independent CPA Report. The court explained:
>
>> "Based on the Schedule of Sales and Remittances together with the foregoing explanation of petitioner, ninety percent (90%) of the export sales per Provisional Invoices for the second and third quarters of 2007 shipments, after deducting the alleged treatment charges, corresponds to the inward remittances received by petitioner."

From the foregoing, it is thus apparent that PMC sufficiently complied with the third requisite of *RR No. 16-2005* by its submission as evidence, the certificates of inward remittances from local banks and pages of its bank passbooks, all of which prove that PMC's export sales were paid for in US dollars, an acceptable foreign currency, and accounted for in accordance with BSP rules.

Relative to the third requisite *of RR No. 16-2005,* the CIR postulates that PMC failed to submit relevant documents necessary to substantiate its alleged receivables, repayment of loan payable, and bank charges, and thus it has failed to prove that it is engaged in zero-rated sales.

In the Decision[69] dated September 24, 2012, the Court in Division enumerated the conditions for export sales to qualify as zero-rated pursuant to *Section 106(A)(2)(a)(1) of the 1997 NIRC, to wit*:

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

In the present case, *Section 106(A)(2)(a)(1) of the 1997 NIRC*, by its plain terms, is clear on the conditions for export sales to qualify as zero-rated. Nowhere in the above-quoted provisions of the *1997 NIRC* and *RR No. 16-2005*, and the above-enumeration, is the condition to "submit relevant documents necessary to substantiate its alleged receivables, repayment of loan payable, and bank charges." To supplement a fifth condition is to read into the clear words of the law an additional condition that its literal wording does not support.

It is not for the Court *En Banc* to make or amend the law without treading the perilous waters of judicial legislation. It is also not within the Court's power to enlarge or abridge laws; otherwise, the Court will be guilty of usurping the exclusive prerogative of Congress. Thus, in resolving controversies, the Court *En Banc's* duty is to apply or interpret the law.[70] To require a fifth condition is to alter the law and to legislate, and not to interpret *Section 106(A)(2)(a)(1) of the 1997 NIRC*. By doing so, the Court *En Banc* would thereby violate the time honored rule against judicial legislation, which this Court will not sanction.

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[69] *Records*, p. 359.
[70] *Rommel Silverio v. Republic of the Philippines*, GR No. 174689, October 19, 2007, 537 SCRA 373.

The Court in Division was correct in partially granting PMC's claim for tax refund/credit of alleged unutilized input VAT for the second and third quarters of taxable year 2007.

The CIR argues that the Court in Division erred when it partially granted PMC' claim for tax refund or credit. To support her argument, she cites *Item III of RMC No. 29-2009,* which indicates conditions/requirements that a taxpayer must comply with in connection with the audit/verification of its administrative claim with the BIR.

The aforestated argument has been thoroughly considered and discussed by the Court in Division when it resolved the matter in its Assailed Resolution dated March 25, 2015. The Court *En Banc* quotes:[72]

> However, it can be gleaned from the facts of the case that during the period that [PMC] filed its administrative claim through the One Stop Shop Center of the Department of Finance, at no instance was [it] notified of the alleged incomplete submission of documents or failure to comply with any other requirements. Should there be failure on the part of [PMC] to do so, the [CIR] should have informed [PMC] as directed by *RMC No. 29-2009.* In fact, [the CIR] even admitted the proper and timely filing of both the administrative and judicial claims as stated in the Stipulation of Facts and Issues jointly entered into by both parties.
>
> Even assuming there were documents which [PMC] failed to submit in its administrative claim, the CTA may still admit such evidence and rule on the matter. In the case of *Commissioner of Internal Revenue [v.] Philippine National Bank,* the Supreme Court opined:
>
> > "More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated *de novo*. Thus, respondent should prove every minute aspect of

[72] *Records, Assailed Resolution,* pp. 417-418.

> its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] ... required for the successful prosecution of [its] administrative claim."
>
> Therefore, the Supreme Court has concluded that once the taxpayer has established by sufficient evidence that it is entitled to a refund or issuance of a tax credit certificate, in accordance with the requirements of the law, its claim should be granted. In this case, the Court is convinced that [PMC] proved its claim for refund of its unutilized excess input taxes.

Considering the foregoing, the Court *En Banc* also finds no blunder in the Court in Division's Assailed Resolution, which settled the CIR's argument in its Motion for Partial Reconsideration[73].

Finding no reversible error, the Court *En Banc* affirms the assailed Decision dated January 21, 2015 and Resolution dated March 25, 2015 of the Court in Division.

WHEREFORE, premises considered, the Petition for Review filed by petitioner is hereby **DENIED.** The Court *En Banc* hereby **AFFIRMS *IN TOTO*** the Decision of the Special Second Division dated January 21, 2015, as well as its Resolution dated March 25, 2015.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[73] *Records*, pp. 268-276.

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to *Article VIII, Section 13 of the Constitution,* it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice