Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

**SPECIAL SECOND DIVISION**
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| **PHILEX MINING CORPORATION,**<br>Petitioner,<br><br>-versus-<br><br>**COMMISSIONER OF INTERNAL REVENUE,**<br>Respondent. | **CTA CASE No. 7933** |
| **PHILEX MINING CORPORATION,**<br>Petitioner,<br><br>-versus-<br><br>**COMMISSIONER OF INTERNAL REVENUE,**<br>Respondent. | **CTA CASE No. 7968**<br><br>Members:<br><br>CASTAÑEDA, JR., *Chairperson*,<br>CASANOVA, and<br>MINDARO-GRULLA, JJ.<br><br>Promulgated:<br><br>SEP 2 2 2014<br>1:30 p.m. |

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# DECISION

**CASTAÑEDA, JR., J.:**

This case is a consolidation of two (2) Petitions for Review separately filed by Philex Mining Corporation to seek the refund of its alleged unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to zero-rated sales during the second and third quarters of 2007, detailed as follows:

| CTA CASE NO. | PERIOD COVERED | AMOUNT OF CLAIM |
|---|---|---|
| 7933 | Second Quarter 2007 | ₱18,412,322.93 |
| 7968 | Third Quarter 2007 | ₱21,846,677.68 |
| TOTAL | | ₱40,259,000.61 |

## THE FACTS

Philex Mining Corporation (petitioner) 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. Petitioner is VAT-registered as evidenced by its VAT Registration Certificate No. 35-6-000731 effective October 29, 1997, and Bureau of Internal Revenue (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 No. 7-95.[1] Its principal office address is located at Brixton corner Fairlane Streets, Pasig City.[2]

The Commissioner of Internal Revenue (respondent) 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 BIR National Office Building, Diliman, Quezon City.

Petitioner 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 ₱3,336,877,804.52, importation of goods of ₱149,885,075.00 with input tax of ₱17,986,209.00, and purchases of services in the amount of ₱3,550,949.42 with input tax of ₱426,112.93.[3]

Petitioner 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 ₱3,322,807,460.21, importation of goods of ₱169,237,058.34 with input tax of ₱20,312,767.00, and purchases of services of ₱3,745,108.00 with input tax of ₱449,412.96, and domestic purchases of goods of ₱9,037,481.00 with input tax of ₱1,084,497.72.[4]

Pursuant to Section 4.112-1 of Revenue Regulations No. 16-2005, petitioner 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 of

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[1] Pars. 1 and 2, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), CTA Case No. 7933, docket, p. 65.
[2] Annex "A-2", Petition for Review, CTA Case No. 7933, docket, p. 11.
[3] Par. 3, Summary of Facts Admitted, SFI, CTA Case No. 7933, docket, p. 65.
[4] Par. 3, Summary of Facts Admitted, SFI, CTA Case No. 7968, docket, p. 45.

₱18,412,322.93 for the second quarter of 2007,[5] and per Application No. 52742 for the amount of ₱21,846,677.68 for the third quarter of 2007.[6]

Since respondent failed to resolve petitioner's claim for refund, petitioner appealed before this Court via the present 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, respondent filed her Answer[7] 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. Petitioner's claim for tax refund is subject to administrative investigation/examination by respondent's Bureau.
>
> 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 petitioner to prove its compliance with the following, viz:
>
> > a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations.
> >
> > b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, 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

[5] Par. 4, Summary of Facts Admitted, SFI, CTA Case No. 7933, docket, p. 66.
[6] Par. 4, Summary of Facts Admitted, SFI, CTA Case No. 7968, docket, p. 46.
[7] CTA Case No. 7933, docket, pp. 31-36.

to Section 112 (C) of the 1997 NIRC, 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.

d. That the input taxes of ₱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 petitioner;
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 petitioner's claim for tax refund allegedly representing unutilized input VAT in the amount of ₱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, as amended.

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. vs. 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. vs. Court of Appeals, 357 SCRA 444)*."

On October 1, 2009, respondent likewise filed an Answer[8] in CTA Case No. 7968, alleging by way of Special and Affirmative Defenses that:

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[8] CTA Case No. 7968, docket, pp. 24-29.

"5. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

6. Petitioner's claim for tax refund is subject to administrative routinary investigation/examination by respondent's Bureau.

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 petitioner to prove its compliance with the following, viz:

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

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, 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 1997 NIRC, 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.

d. That the input taxes of ₱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 petitioner;

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 petitioner's claim for tax refund allegedly representing unutilized input VAT in the amount of ₱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, as amended.

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. vs. 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. vs. Court of Appeals, 357 SCRA 444)*."

The parties filed their Stipulation of Facts and Issues on October 16, 2009, which was approved by this Court 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 this Court 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, petitioner 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.[9] This Court granted the motion for consolidation in a Resolution[10] dated January 27, 2010.

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[9] CTA Case No. 7968, docket, pp. 67-68.
[10] CTA Case No. 7968, docket, p. 69.

Petitioner filed its Formal Offer of Evidence[11] 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 petitioner to mark and identify the same in Court.

On the other hand, respondent 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.[12]

On September 3, 2010, the case was ordered submitted for decision after petitioner submitted its Memorandum on August 10, 2010, *sans* respondent's Memorandum.

This Court rendered its Decision[13] on March 17, 2011, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review in CTA Case Nos. 7933 and 7968 is hereby **DENIED** for having been prematurely filed.
>
> **SO ORDERED**."

In denying the Petition for Review, this Court in part said:

> "Although the administrative claim was filed within the two (2)-year prescriptive period, We are, however, constrained to deny the claim on the ground of premature filing before this Court.
>
> The administrative claim for refund was filed on June 15, 2009. This gives the respondent until October 13, 2009 to decide the petitioner's claim. This gives the petitioner a period of thirty (30) days or until November 12, 2010 from October 13, 2009 to file its Petition for Review. Unfortunately, the Petitions for Review covering the 2nd and 3rd quarters of 2007 were filed on June 19, 2009 and September 8, 2009 respectively. Clearly, the petitions for review filed before this Court were

[11] CTA Case No. 7933, docket, pp. 96-101.
[12] Minutes of the Hearing, July 26, 2010, CTA Case No. 7933, docket, p. 108.
[13] CTA Case No. 7933, docket, pp. 130-143.

made without waiting for expiration of the 120-day period within which the respondent shall decide upon the administrative claim."[14]

Petitioner filed a Motion for Reconsideration[15] of the Decision dated March 17, 2011 on April 4, 2011. This Court then issued a Resolution[16] dated April 6, 2011, ordering respondent to file a comment within ten (10) days from notice. Respondent filed her Comment[17] on April 18, 2011.

This Court rendered a Resolution[18] dated May 11, 2011, the dispositive portion of which reads:

"**WHEREFORE**, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED**."

On June 7, 2011, petitioner filed an appeal before the Court of Tax Appeals, sitting *En Banc*, via Petition for Review.[19] In its Resolution[20] dated July 4, 2011, the CTA *En Banc* ordered respondent to comment thereto within ten (10) days from receipt. Petitioner was also given an opportunity to file its Reply within five (5) days from receipt of respondent's Comment.

After respondent filed a Comment[21] on July 21, 2011 *sans* Reply of petitioner, the CTA *En Banc* issued a Resolution[22] dated August 17, 2011 and ordered both parties to file their respective Memorandum within thirty (30) days from notice.

Petitioner filed its Memorandum[23] on September 21, 2011; while respondent again failed to file her Memorandum.

On September 24, 2012, the CTA *En Banc* issued a Decision[24] denying the Petition, the dispositive portion of which is quoted hereunder:

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[14] CTA Case No. 7933, docket, pp. 141-142.
[15] CTA Case No. 7933, docket, pp. 144-155.
[16] CTA Case No. 7933, docket, p. 157.
[17] CTA Case No. 7933, docket, pp. 158-162.
[18] CTA Case No. 7933, docket, pp. 164-167.
[19] CTA Case No. 7933, docket, pp. 170-211.
[20] CTA Case No. 7933, docket, pp. 218-219.
[21] CTA Case No. 7933, docket, pp. 212-216.
[22] CTA Case No. 7933, docket, pp. 221-222.
[23] CTA Case No. 7933, docket, pp. 223-234.
[24] CTA Case No. 7933, docket, pp. 236-265.

> "**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit. Consequently, the filing of the Petitions for Review in CTA Case No. 7933 and CTA Case No. 7968 are both deemed premature; and therefore, this Court has no jurisdiction to entertain the instant case.
>
> Accordingly, the Decision dated March 17, 2011 and the Resolution dated May 11, 2011 of the Court in Division in CTA Case Nos. 7933 and 7968 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

On October 22, 2012, petitioner filed a Motion for Reconsideration of the Decision dated September 24, 2012.[25] Later, in its Resolution[26] dated November 12, 2012, the CTA *En Banc* ordered respondent to file her comment within ten (10) days from notice and after which, with or without comment, the motion shall be deemed submitted for resolution. Respondent filed her Comment[27] on November 23, 2012.

The CTA *En Banc* issued an Amended Decision[28] on May 28, 2013. The *fallo* of the Amended Decision states:

> "**WHEREFORE**, in light of the foregoing considerations, petitioner's Motion for Reconsideration is **GRANTED**. The Court *En Banc's* Decision promulgated on September 24, 2012 is hereby **REVERSED** and **SET ASIDE**. Moreover, the assailed Decision dated March 17, 2011, and Resolution dated May 11, 2011, both rendered by the Second Division of this Court, denying the Petition for Review in CTA Case Nos. 7933 and 7968 for having been prematurely filed, are likewise **REVERSED** and **SET ASIDE**.
>
> Accordingly, the consolidated cases of CTA Case Nos. 7933 and 7968 are hereby **REMANDED** to the Second Division of this Court for a complete determination of petitioner's 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.
>
> **SO ORDERED.**" Jc

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[25] CTA Case No. 7933, docket, pp. 268-276.
[26] CTA Case No. 7933, docket, pp. 282-283.
[27] CTA Case No. 7933, docket, pp. 284-291.
[28] CTA Case No. 7933, docket, pp. 294-301.

In granting the Motion for Reconsideration of petitioner, the CTA *En Banc* said:

> "Records show that petitioner filed its administrative claim for refund of its unutilized input VAT for the second and third quarters of taxable year 2007 on June 15, 2009, which is well within the prescribed two (2)-year period after the close of the respective taxable quarters when the sales were made. Thereafter, without waiting for the lapse of the 120-day period given to the respondent to decide on the refund claim on the administrative level, petitioner immediately sought recourse before the Court of Tax Appeals on June 19, 2009 (only 4 days after it filed said administrative claim) docketed as CTA Case No. 7933 (covering the claim for the second quarter of taxable year 2007), and on September 8, 2009 (only 85 days after it filed said administrative claim) docketed as CTA Case No. 7968 (covering the claim for the third quarter of taxable year 2007).
>
> It appears that petitioner's administrative and judicial claims were filed during the exception period mentioned in the consolidated *San Roque case*, thus, petitioner's judicial claim is shielded from the vice of prematurity from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 until its reversal by the Supreme Court in the *Aichi* case on October 6, 2010. It must be remembered that BIR Ruling No. DA-489-03 was considered by the High Court as a general interpretative rule applicable to all taxpayers and it expressly said that the **'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with CTA by way of Petition for Review.'**"[29]

Respondent then filed a Motion for Reconsideration[30] of the Amended Decision dated May 28, 2013. Consequently, the CTA *En Banc* ordered petitioner to file its comment within ten (10) days from notice, as per Resolution[31] dated July 15, 2013.

In its Resolution[32] dated October 1, 2013, the CTA *En Banc* denied respondent's Motion for Reconsideration, the dispositive part of which reads:

> "**WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

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[29] CTA Case No. 7933, docket, pp. 299-300.
[30] CTA Case No. 7933, docket, pp. 305-310.
[31] CTA Case No. 7933, docket, pp. 313-314.
[32] CTA Case No. 7933, docket, pp. 316-323.

Since no appeal was taken to the Supreme Court, the CTA *En Banc*, in its Resolution[33] dated February 3, 2014, declared that the Amended Decision promulgated on May 28, 2013 already became final and executory. As a result, the CTA *En Banc* ordered the issuance of Entry of Judgment, which Entry of Judgment[34] was issued on March 1, 2014.

On March 27, 2014, the Court issued a Resolution[35] that the Entry of Judgment should have quoted the dispositive portion of the Amended Decision dated May 28, 2013. As such, the Court ordered the Executive Clerk of Court IV to amend the Entry of Judgment before it can act on the remand of the instant case. On April 2, 2014, the Amended Entry of Judgment[36] was issued.

On April 23, 2014, the Court issued a Resolution[37] setting the instant case for presentation of petitioner's additional evidence on May 26, 2014. On May 15, 2014, petitioner instead filed a Manifestation and Motion[38] praying that the hearing on May 26, 2014 be cancelled and that the case be considered submitted for decision. The motion was granted by this Court in the Resolution[39] dated May 20, 2014. Hence, this Decision.

## THE ISSUES

The stipulated issues[40] can be summarized as follows:

Whether or not petitioner is entitled to the refund of the alleged excess input taxes in the amount of ₱18,412,322.93 for the second quarter of 2007 and in the amount of ₱21,846,677.68 for the third quarter of 2007, representing its unutilized input VAT for the purchase/importation of goods and services on account of its being a producer and exporter of mineral products.

## THE COURT'S RULING

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

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

[33] CTA Case No. 7933, docket, pp. 325-326.
[34] CTA Case No. 7933, docket, pp. 327-328.
[35] CTA Case No. 7933, docket, pp. 330-331.
[36] CTA Case No. 7933, docket, pp. 332-333.
[37] CTA Case No. 7933, docket, pp. 335-336.
[38] CTA Case No. 7933, docket, pp. 337-339.
[39] CTA Case No. 7933, docket, p. 340.
[40] Statement of the Issue, SFI, CTA Case No. 7933 and 7968, docket, pp. 66 and 46, respectively.

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

Based on the above-quoted provision, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of unutilized input VAT attributable to such zero-rated or effectively zero-rated sales upon compliance with the following requisites:

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

As discussed in the Amended Decision[41] dated May 28, 2013 of the Court *En Banc*, petitioner was able to comply with the fifth requisite, *viz.*, petitioner timely filed its claim for refund in the administrative and judicial levels. Hence, the Court shall now determine petitioner's compliance with the remaining requisites provided under Section 112(A) of the NIRC of 1997, as amended.

[41] CTA EB No. 787 (CTA Case Nos. 7933 and 7968), CTA Case No. 7933, docket, pp. 294-301.

Anent the first requisite, for the second and third quarters of 2007, petitioner duly filed with the BIR its Quarterly VAT Returns declaring, among others, the following:

| | **2nd Quarter** (Exhibit "N-7") | **3rd Quarter** (Exhibit "N-8") |
|---|---|---|
| VATable Sales/Receipt | ₱ 13,012,728.16 | ₱ 26,785.75 |
| Zero-rated Sales/Receipts | 3,336,877,804.52 | 3,322,807,460.21 |
| Total Sales/Receipts | 3,349,890,532.68 | 3,322,834,245.96 |
| | | |
| Output Tax Due | 1,561,527.38 | 3,214.29 |
| | | |
| Less: Allowable Input Tax | | |
| Input Tax Carried Over from Previous Quarter | 92,384,161.66 | 109,234,957.21 |
| Current Transactions | | |
| Domestic Purchases of Goods Other than Capital Goods | - | 1,084,497.72 |
| Importations of Goods Other than Capital Goods | 17,986,209.00 | 20,312,767.00 |
| Domestic Purchase of Services | 426,113.93 | 449,412.96 |
| *Total Input VAT from Current Transactions* | *18,412,322.93* | *21,846,677.68* |
| Total Available Input Tax | 110,796,484.59 | 131,081,634.89 |
| Tax Still Payable/(Overpayment) | **(₱109,234,957.21)** | **(₱131,078,420.60)** |

The Court-commissioned Independent Certified Public Accountant (CPA), Ms. Ma. Milagros F. Padernal, noted in her Consolidated Report[42] dated February 25, 2010 that petitioner's zero-rated sales for the second and third quarters of 2007 in the amount of ₱3,336,877,804.52 and ₱3,322,807,460.21 have US dollar value of $72,171,652.00 and $72,666,701.00, respectively, consisting of the following:[43]

| | **2ND QUARTER** | **3RD QUARTER** | **TOTAL** |
|---|---|---|---|
| Provisional billings for direct export sales of copper to Japan | US$ 67,121,907.00 | US$ 67,168,035.00 | US$ 134,289,942.00 |
| Adjustment to previous quarters' provisional billings | 5,049,745.00 | 5,498,666.00 | 10,548,411.00 |
| **TOTAL** | **US$72,171,652.00** | **US$72,666,701.00** | **US$144,838,353.00** |

As per petitioner's Schedule of Export Sales[44], zero-rated sales in the amount of US$72,171,652.00 and US$72,666,701.00[45] for the second and third quarters of 2007, respectively, may be broken down as follows:

[42] Exhibit "P".
[43] Exhibit "P", No. 2 of the Summary of Findings, page 2 of 14.
[44] Exhibit "E".
[45] US$72,666,702.00.

| SECOND QUARTER OF 2007 | | | | | |
|---|---|---|---|---|---|
| Provisional Invoice No. | Exhibit | Final Invoice No. | Exhibit | Consignee | Amount Recorded in the General Ledger |
| *Current Quarter's Shipment* | | | | | |
| 2501 | E-1-b | 2510 | E-1-c | Pan Pacific Copper Co., Ltd. | 17,446,779.00 |
| 2503 | E-2-b | 2513 | E-2-c | Pan Pacific Copper Co., Ltd. | 16,938,439.00 |
| 2505 | E-3-b | 2514 | E-3-c | Pan Pacific Copper Co., Ltd. | 16,261,006.00 |
| 2506 | E-4-b | 2516 | E-4-c | Pan Pacific Copper Co., Ltd. | 16,475,683.00 |
| ***Subtotal*** | | | | | **67,121,907.00** |
| *Catch-up Adjustments to Prior Quarter's Shipments* | | | | | |
| 2487 | E-5-b | 2498 | E-5-c | Pan Pacific Copper Co., Ltd. | (360,557.00) |
| 2490 | E-6-b | 2499 | E-6-c | Pan Pacific Copper Co., Ltd. | (466,740.00) |
| 2491 | E-7-b | 2502 | E-7-c | Pan Pacific Copper Co., Ltd. | 798,959.00 |
| 2492 | E-8-b | 2500 | E-8-c | Pan Pacific Copper Co., Ltd. | 2,433,690.00 |
| 2495 | E-9-b | 2504 | E-9-c | Pan Pacific Copper Co., Ltd. | 2,644,393.00 |
| 2496 | E-10-b | 2507 | E-10-c | Pan Pacific Copper Co., Ltd. | - |
| ***Subtotal*** | | | | | **5,049,745.00** |
| | | | | | |
| **Total Sales in the Second Quarter of 2007 in US$** | | | | | **72,171,652.00** |

| THIRD QUARTER OF 2007 | | | | | |
|---|---|---|---|---|---|
| Provisional Invoice No. | Exhibit | Final Invoice No. | Exhibit | Consignee | Amount Recorded in the General Ledger |
| *Current Quarter's Shipment* | | | | | |
| 2508 | E-11-b | 2519 | E-11-c | Pan Pacific Copper Co., Ltd. | 16,925,092.00 |
| 2509 | E-12-b | 2552 | E-12-c | Pan Pacific Copper Co., Ltd. | 16,150,350.00 |
| 2511 | E-13-b | 2523 | E-13-c | Pan Pacific Copper Co., Ltd. | 16,997,223.00 |
| 2512 | E-14-b | 2525 | E-14-c | Pan Pacific Copper Co., Ltd. | 17,095,371.00 |
| ***Subtotal*** | | | | | **67,168,036.00** |
| *Catch-up Adjustments to Prior Quarter's Shipments* | | | | | |
| 2496 | E-15-b | 2507 | E-15-c | Louis Dreyfus Commodities Metals Suisse SA | 2,056,691.00 |
| 2497 | E-16-b | 2515 | E-16-c | Louis Dreyfus Commodities Metals Suisse SA | 1,561,637.00 |
| 2501 | E-17-b | 2510 | E-17-c | Pan Pacific Copper Co., Ltd. | 214,722.00 |
| 2503 | E-18-b | 2513 | E-18-c | Pan Pacific Copper Co., Ltd. | 446,412.00 |
| 2505 | E-19-b | 2514 | E-19-c | Pan Pacific Copper Co., Ltd. | 740,222.00 |
| 2506 | E-20-b | 2516 | E-20-c | Pan Pacific Copper Co., Ltd. | 478,982.00 |
| ***Subtotal*** | | | | | **5,498,666.00** |
| | | | | | |
| **Total Sales in the Third Quarter of 2007 in US$** | | | | | **72,666,702.00** |

Petitioner claims that the shipments and sales of its mineral products to Pan Pacific Copper, Co., Ltd. of Tokyo, Japan and Louis Dreyfus Commodities Metals

Suisse SA of Geneva, Switzerland are zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which provides:

"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);"

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

1. That 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.

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

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

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

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

xxx xxx xxx

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

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

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

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term '**zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

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

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

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

xxx xxx xxx

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

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

**(B) Information contained in VAT invoice or VAT official receipt**. - The following information shall be indicated in VAT invoice or VAT official receipt:

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

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

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

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

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices*. - All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered** receipts or **sales** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx" *(Emphasis supplied)*

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

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

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

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

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

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

In the instant case, the fact that petitioner is VAT-registered is not disputed.[46] Pursuant to its Long Term Gold and Copper Concentrate Sales Agreement[47] with Pan Pacific Copper Co., Ltd. of Tokyo, Japan, for the period covering the second and third quarters of 2007, petitioner actually shipped mineral products and generated sales in the amount of US$72,171,652.00 and US$72,666,701.00[48] for the second and third quarters of 2007, respectively, as shown in petitioner's Schedule of Export Sales[49], which are duly substantiated by provisional invoices[50], final invoices[51], bills of lading[52], and export declarations[53].

While the Court noted that the final invoices submitted by petitioner bear dates later than the dates of shipment indicated in the bills of lading and provisional invoices, petitioner explained that in its direct exports of copper concentrates, it issues two invoices to the buyer. The first is the provisional invoice which it issues

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[46] Par. 2, Summary of Facts Admitted, SFI, CTA Case Nos. 7933 and 7968, docket, pp. 65 and 45.
[47] Exhibit "C".
[48] US$72,666,702.00.
[49] Exhibit "E".
[50] Exhibits "E-1-b" to "E-20-b".
[51] Exhibits "E-1-c" to "E-20-c".
[52] Exhibits "E-1-a" to "E-20-a".
[53] Exhibits "E-1" to "E-20".

upon shipment covering ninety percent (90%) of the estimated value of the shipment, while the second is the final invoice which petitioner issues only after reaching an agreement with the buyer regarding the final settlement of weights, assays and quotations or final value of the shipment; which are determined or done after arrival of the shipment at the port of loading.[54]

In other words, the considered date of the sale transaction is the shipment date indicated in the bill of lading. Inasmuch as the bills of lading covering export sales of US$67,121,907.00 and US$67,168,035.00 were all dated within the second and third quarters of 2007, the final invoices related thereto that bear dates later than the dates when the sales or shipments were made, are deemed valid.

As to adjustments to correct billings for the previous quarter's shipments in the amount of US$5,049,745.00 and US$5,498,666.00 for the second and third quarters of 2007, respectively, this Court finds the adjustments proper as shown by export declarations[55], bill of ladings[56], provisional invoices[57], and final invoices[58].

Petitioner 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 petitioner received payments in US dollars through the banking system in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*. The Independent CPA, as shown in her Report, accounted the inward remittances that allegedly correspond to the export sales taking in consideration petitioner's beginning and ending receivables, repayment of loan, and bank charges, summarized as follows:

| **PARTICULARS** | **2nd Quarter** (in US$) | **3rd Quarter** (in US$) | **Total** (in US$) |
|---|---|---|---|
| Gross Sales per Schedule of Sales & 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: | | | |
| 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 | | | |
| Pan Pacific Copper Co., Ltd. | (1,049,300.00) | (1,053,331.00) | (2,102,631.00) |

[54] Clause 9 of Exhibit "C".
[55] Exhibits "E-5" to "E-10" and "E-15" to "E-20".
[56] Exhibits "E-5-a" to "E-10-a" and "E-15-a" to "E-20-a".
[57] Exhibits "E-5-b" to "E-10-b" and "E-15-b" to "E-20-b".
[58] Exhibits "E-5-c" to "E-10-c" and "E-15-c" to "E-20-c".

| | | | |
|---|---|---|---|
| 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 | - | 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 petitioner 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 petitioner 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 petitioner 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 petitioner to submit or present the above-enumerated documents, petitioner 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 NIRC of 1997, as amended, because there is no zero-rated or effectively zero-rated sale to speak of.

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

**SO ORDERED.**

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

**WE CONCUR:**

**CAESAR A. CASANOVA**
Associate Justice

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

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice