REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILEX MINING CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 939
(CTA Case No. 8044)

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

Promulgated:

FEB 12 2014 *CrApolinario 2:00 p.m.*

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by petitioner, Philex Mining Corporation, on September 24, 2012, pursuant to Section 18[2] of Republic Act ("RA") No. 1125, as amended by RA No. 9282, and RA No. 9503, praying for the reconsideration of the Decision,[3]

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[1] *Rollo*, CTA EB Case No. 939 (CTA Case No. 8044), pp. 1-59, with Annexes.

[2] Sec. 18. *Appeal to the Court of Tax Appeals En Banc*. – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

[3] *Rollo*, pp. 18-45; Annex "A." Penned by Associate Justice Esperanza R. Fabon-Victorino, with then Presiding Justice Ernesto D. Acosta, concurring, while Associate Justice Erlinda P. Uy, was on leave.

and Resolution[4] respectively promulgated by the then First Division of the Court ("Court in Division") on April 17, 2012 and August 31, 2012, and accordingly, for an order directing respondent Commissioner of Internal Revenue to refund the amount of Eleven Million Five Hundred Fifty Five Thousand Six Hundred Fifteen Pesos and Thirty Eight Centavos (P11,555,615.38) representing unutilized excess input value-added tax ("VAT") attributable to its zero rated sales for the 1st quarter of 2008.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated April 17, 2012, as follows:[5]

> "Petitioner alleges that it is a duly organized and existing domestic corporation with principal office at 27 Brixton St., Pasig City. It is engaged in mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is a registered VAT taxpayer with VAT Registration Certificate No. 35-6-000731 effective October 29, 1997. It has an approved Application for Zero-Rate, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95, effective April 12, 1998.
>
> Respondent, on the other hand, is the government official charged with the administration and enforcement of the national internal revenue laws, with the authority to grant refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code. She holds office at the BIR National Office, Diliman, Quezon City.
>
> During the 1st quarter of 2008, petitioner sold and shipped its production of mineral products to a foreign buyer as direct exports. The said sale amounted to Php2,166,288,788.31 and was paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

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[4] *Ibid.*, pp. 46-56; Annex "B."
[5] *Ibid.*, pp. 18-25.

During the same period, it purchased imported goods and availed domestic services in the amount of Php99,342,433.34 and Php8,053,446.59, respectively, all for use in its mining operations, production and sale of its mine products. For the said purchases, petitioner paid input tax of Php11,921,092.00 and Php966,413.59, respectively, or in the sum of Php12,887,505.59.

On April 22, 2008, petitioner filed its original or tentative VAT return for the 1st quarter of 2008. Subsequently or on December 11, 2009, it filed an amended return for the said quarter reflecting the following:

	Amount	Input
Zero-rated sales	P2,166,288,788.31	-
Importation of goods	99,342,433.34	11,921,092.00
Domestic purchase of services	8,053,445.59	966,413.59

On March 4, 2010, petitioner filed a claim for refund/tax credit with the One-Stop-Shop Center of the Department of Finance, per Application No. 49810, covering its unutilized input VAT for the first quarter of 2008 in the amount of Php12,887,505.59.

About twenty-five (25) days thereafter or on March 29, 2010, petitioner filed the instant Petition for Review allegedly to preserve its right to claim for refund of its excess and unutilized input taxes for the first quarter of 2008 hinged on the ground of inaction on the part of respondent.

In her Answer filed on May 6, 2010, respondent moves to dismiss the petition raising the following *Special and Affirmative Defenses* as grounds therefore, viz:

> '4. The claim for refund is still undergoing routinary investigation. Said claim for refund had just been filed on 4 March 2010 and the instant Petition was filed before this Honorable Court on 10 March 2010, barely six (6) days after the filing of the claim for refund/tax credit before the One Stop Shop of the Department of Finance;

5. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;

6. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;

7. The Petitioner should prove that the input tax of the Petitioner remains to be unutilized.'

The parties filed their respective pre-trial briefs, followed by their *Stipulation of Facts and Issues* on May 21, 2010, which the Court approved in its Resolution dated May 27, 2010.

Trial ensued during which petitioner presented two witnesses, namely: 1) Eileen C. Rodriguez, a Manager in its Accounting Department; and 2) Albert G. Alba, the Court Commissioned Independent Certified Public Accountant (ICPA).

Witness Eileen Rodriguez, by way of a Judicial Affidavit, testified that she is a manager in the Accounting Department of petitioner. As such, she is tasked to supervise and review the preparation and filing of various tax returns, including the filing of claims for refund of overpaid or excess taxes.

On April 22, 2008, petitioner allegedly filed its original or tentative VAT return for the first quarter of 2008 which was amended on December 11, 2009 to reflect the zero-rated sales in the amount of Php2,166,288,788.31.

She continued to say that during the first quarter of 2008, petitioner's copper concentrates productions were sold to Pan Pacific Copper Co. Ltd., a Japanese company based in Tokyo, Japan. The sale is covered by a 'Long Term Gold and Copper Concentrates Sales Agreement' dated March 11, 2004. Under the said agreement, the buyer is required to pay the price of each shipment of copper concentrates in two (2) stages. First, a provisional payment at the time of shipment equivalent to ninety percent (90%) of the provisional price as determined by the seller based on shipped weight and the seller's provisional assay. The second stage is the final payment to cover the balance of the concentrate value upon presentation of the final invoice after all data necessary to determine the final settlement are available. This explains the delay in the issuance by petitioner of the Final Invoices.

All payments by the Japanese Company were in United States Dollar deposited in an account designated by the Seller or Buyer, as the case may be.

As the commissioned ICPA, Albert G. Alba testified that he conducted an audit pertinent to the present claim for refund or issuance of tax credit certificate of petitioner. In relation thereto, he prepared a Report dated July 20, 2010 submitted to the Court on July 22, 2010, copy furnished respondent. His examination and validation of petitioner's pertinent documents show that out of the excess input tax paid for the first quarter of 2008 in the amount of Php12,887,505.59, Php403,320.59 was used by petitioner to pay its output tax for the quarter. The balance of Php12,887,505.59 was deducted as VAT refund/TCC claimed in the fourth quarter of 2009 and not carried over to the first quarter of 2010.

On January 3, 2011, the Court, sans any comment or opposition from respondent, admitted the documents formally offered by petitioner on November 5, 2010.

During the hearing on March 3, 2011, respondent's counsel submitted the case for decision without presentation of any evidence on the ground of lack of records from the Bureau of Internal Revenue.

On April 12, 2011, the Petition for Review was submitted for decision taking into consideration the Memorandum of petitioner filed on April 4, 2011, again, sans respondent's Memorandum."

The Ruling of the Court in Division

On April 17, 2012, the Court in Division promulgated a Decision partially granting petitioner's Petition for Review by ruling that:

> **"WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **SEVEN HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED NINETY-SEVEN PESOS AND THIRTY CENTAVOS (Php729,697.30)**, representing the latter's excess/unutilized input tax attributable to substantiated zero-rated sales for the first quarter of 2008.
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> **SO ORDERED**."[6]

On May 8, 2012, respondent filed her Motion for Reconsideration,[7] while petitioner filed its Motion for Partial Reconsideration[8] on May 15, 2012 and Opposition (To Respondent's Motion for Reconsideration) dated May 31, 2012.[9] On August 31, 2012, the Court in Division issued a Resolution denying both parties' motions, the dispositive portion of which is as follows:

> **"WHEREFORE**, there being no compelling reason to disturb the ruling of the Court in the assailed Decision of April 17, 2012, the *Motion for Reconsideration* and the *Motion for Partial Reconsideration* filed by the Commissioner of Internal Revenue and Philex Mining Corporation, respectively, are hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**."[10]

The Issues

Hence, the present Petition for Review where petitioner proffers the following grounds:

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[6] *Ibid.*, p. 44.
[7] *Records* (CTA Case No. 8044), pp. 157-161.
[8] *Ibid.*, pp. 163-172.
[9] *Ibid.*, pp. 176-187.
[10] *Rollo.*, p. 56.

I. THE 1ST DIVISION ERRED IN RULING THAT PETITIONER'S EXPORT SALES TO LD METALS ARE NOT ZERO-RATED ON THE GROUND THAT THE SALES INVOICES WERE NOT REGISTERED WITH THE BIR;

II. THE 1ST DIVISION ERRED IN DISALLOWING INPUT TAXES THAT ARE SUPPORTED BY BCORs/BDAs AND IEIRDs THAT ARE DATED OUTSIDE THE PERIOD OF THE CLAIM; and

III. THE 1ST DIVISION ERRED IN DISALLOWING THE REFUND OF INPUT TAXES SUPPPORTED BY IEIRDs WITHOUT MACHINE VALIDATION.[11]

Petitioner's Arguments

Petitioner argues in the following manner:

a. That final sales invoice numbers 2540 and 2542 are BIR-registered as petitioner was granted an authority to print sales invoices bearing the numbers 02501 to 02900, therefore it is entitled to refund on its export sales of copper to LD Metals in the total amount of US$32,428,723.00.[12]

b. That nothing in Section 112(A) of the 1997 NIRC, as amended which requires that input taxes attributable to zero-rated sales must be paid in the same taxable quarter as when the sales were made. All that Section 112(A) of the 1997 NIRC, as amended requires is that the claimed input VAT has not been applied against any output tax. Since the reported input VAT in the amount of P1,306,274.00 on goods imported in the immediately preceding taxable quarter (4th quarter of 2007) was unclaimed or applied against any output VAT, this amount should be refunded in the current quarter (1st quarter of 2008); and

c. That Sections 110(A) and 113(A) of the 1997 NIRC, as amended, and Sections 4.110-8 and 4.113-1 of Revenue Regulations No. 16-2005, dated September 1, 2005, do not require that IERDS must be machine validated; what all the foregoing laws require are that the input taxes for the importation of goods must be substantiated and supported by "import entry or other equivalent document showing actual payment of VAT on the imported goods."

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[11] *Rollo*, pp. 2-3.
[12] The sum of US$15,590,026.00 and US$16,838,697.00.

The Ruling of the Court En Banc

The Court *En Banc* finds the Petition for Review unmeritorious.

In the Decision dated April 17, 2012, the Court in Division unanimously ruled as follows:

> "Claims for refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales is governed by Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which states, thus:
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> Hence, to be entitled to a refund, the claimant must establish compliance with the following requisites:
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> 1. there must be zero-rated or effectively zero-rated sales;
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> 2. that input taxes were incurred or paid;
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> 3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
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> 4. that the input taxes were not applied against any output VAT liability; and
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> 5. that the claim for refund was filed within the two-year prescriptive period.
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> Over and above the foregoing requirements, the claimant must file the Petition for Review before the CTA within the period prescribed under Section 112(C) of the NIRC, which reads as follows:
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> xxx xxx xxx
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> The provision allows the affected taxpayer to appeal before the CTA within thirty (30) days from receipt of the decision or from inaction of the

Commissioner of Internal Revenue after the lapse of the one hundred twenty (120)-day period.

Paramount however, is the timeliness of the filing of the claim for refund or TCC in the administrative as well as in the judicial level.

Under Section 112(A) of the NIRC of 1997, as amended, a taxpayer must file an application for refund or tax credit of unutilized or excess creditable input VAT attributable to its zero-rated or effectively zero-rated sales within two (2) years after the close of the taxable quarter when the sales were made.

The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, settled this issue well enough. As carefully explained in the said case, the reckoning of the two-year prescriptive period for the filing of a claim for refund of input VAT under Section 112(A) of the NIRC of 1997 commences from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

The subject of the present claim for refund or issuance of a tax credit certificate is petitioner's unutilized or excess creditable input VAT, attributable to zero-rated or effectively zero-rated sales for the first quarter of 2008. Hence, counting from March 31, 2008 or the close of the first quarter, petitioner had until March 31, 2010, within which to file its administrative claim with respondent. Evidently, petitioner's application for refund with the One-Stop-Shop Center of the Department of Finance was filed within the two-year prescriptive period on March 4, 2010.

However, the same is not true with filing of the instant Petition for Review.

From March 4, 2010 or the date petitioner's application for refund was filed with the BIR and presumably the date of its submission of complete documents supporting its application for refund, the

> Commissioner of Internal Revenue had one hundred twenty (120) days or until July 2, 2010, within which to decide on the claim. After the lapse of the said 120-day period without any action on her part, petitioner had thirty (30) days or until August 1, 2010, within which to seek judicial recourse.
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> In the instant case, petitioner worked against time and prematurely filed its Petition for Review on March 29, 2010 or barely twenty-five (25) days from the filing of its administrative claim, clearly without waiting for the 120-day period to lapse. Evidently, petitioner failed to exhaust the administrative remedies available under the law.
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> An examination of the record shows that respondent failed to raise the defense of prematurity in the filing of the instant petition in his Answer thereto. Neither was respondent able to raise it as ground in a Motion to Dismiss. Moreover, it was jointly stipulated that the instant petition was filed with the Court within the period of limitation prescribed under Section 112(C) of the NIRC of 1997, as amended. Such act may be considered as a waiver of the said defense on the part of respondent. In fine, the Court may aptly take cognizance of the instant Petition for Review."[13]

The Court *En Banc* notes that in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue,*[14] the Supreme Court held that the 120+30 day period is mandatory and jurisdictional, however, it admits of an exception such as to all the taxpayer who relied on BIR Ruling No. DA-489-03 which expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review," from December 10, 2003 to October 6, 2010, to wit:

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[13] *Rollo*, pp. 25-32.
[14] G.R No. 187485, G.R. No. 196113, G.R. No. 197156, February 12, 2013, 690 SCRA 336.

"When Section 112(C) states that 'the taxpayer affected may within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals,' the law does not make the 120+30 day periods optional just because the law uses the word 'may.' The word 'may' simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word 'may' be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

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To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the Atlas doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

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On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must necessarily continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings. What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period, unless the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code.

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VI. BIR Ruling No. DA-489 -03 dated 10 December 2003

BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 expressly states that the 'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.' Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since

> equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
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> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional."

In the instant case, petitioner filed its administrative claim on March 4, 2010,[15] while BIR Ruling No. DA-489-03 was still enforced and effect, therefore, petitioner need not wait for the lapse of 120-day period given to the Commissioner to decide on the aforesaid claim, before it can file its judicial claim.[16]

Thus, the filing of the instant Petition for Review on March 29, 2010[17] by petitioner did not divest the Court in Division its jurisdiction to decide the instant case.

Now, We proceed to discuss the issues raised by petitioner with the Court *En Banc*.

Anent the first issue, petitioner attached the following documents: a machine copy of its Authority to Print No. OCN8AU0000065595 dated January 26, 2006 as *Annex "C"*;[18] a copy of taxpayer-user's Sworn Statement, as *Annex "D"*; and a copy of Printer's Certificate of Delivery of Receipts and/or Invoices, as *Annex "E,"* in order for the Court *En Banc* to reconsider petitioner's sales to Louis Dreyfus Commodities Metals Suisse SA in the amounts of US$15,590,026.00 and US$16,838,697.00, by invoking the case of *BPI- Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax and the Commissioner of Internal Revenue*.[19]

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[15] *Records*, p. 7 in relation to Annex "C,"p. 17.
[16] *Id.*, p. 5.
[17] *Id.*
[18] *Rollo*, p. 57.
[19] G.R. No. 122480, April 12, 2000, 330 SCRA 507.

However a perusal of the aforesaid documents reveal that they are mere photocopies of the originals, therefore inadmissible in evidence as held by the Supreme Court in the case of *Citibank, N. A. Mastercard vs. Efren S. Teodoro,*[20] to wit:

> "Finally, respondent contends that the alleged loss or unavailability of the original sales invoices was not sufficiently established. Allegedly, Hernandez had requested the originals from Equitable Credit Card Network, Inc., but failed to show in court that he had followed up his request as advised by another witness, Zen Hipolito. Therefore, the requirement of reasonable diligence and good faith in the search for or attempt to produce the originals was not satisfied, because he had shown no proof of having followed up the request.
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> The burden of proof rests upon petitioner, as plaintiff, to establish its case based on a preponderance of evidence. It is well-settled that in civil cases, the party that alleges a fact has the burden of proving it. Petitioner failed to prove that respondent had an obligation in the principal amount of ₱24,388.36, because the photocopies of the original sales invoices it had presented in court were inadmissible in evidence. Moreover, had they been admissible, they would still have had little probative value.
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> The original copies of the sales invoices are the best evidence to prove the alleged obligation. Photocopies thereof are mere secondary evidence. As such, they are inadmissible because petitioner, as the offeror, failed to prove any of the exceptions provided under Section 3 of Rule 130 of the Rules of Court, as well as the conditions of their admissibility. Because of the inadmissibility of the photocopies in the absence of the originals, respondent's obligation was not established.
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> Section 5 of Rule 130 of the Rules of Court states:

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[20] G.R. No. 150905. September 23, 2003, 411 SCRA 577.

> 'SEC. 5. *When original document is unavailable.* - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.'
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> Applying the above Rule to the present case, before a party is allowed to adduce secondary evidence to prove the contents of the original sales invoices, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its nonproduction in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: *existence, execution, loss, and contents.* At the sound discretion of the court, this order may be changed if necessary."

Furthermore, based on Section 34 of Rule 132 of the Rules of Court,[21] "the court shall consider no evidence which has not been formally offered," as the rational thereof is stated in the case of *Westmont Investment Corporation vs. Amos Francia, Jr., Cecilia Zamora, etc.*,[22] which states:

> "A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously

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[21] Sec. 34. *Offer of evidence.* -- The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
[22] G.R. No. 194128, December 7, 2011, 661 SCRA 787.

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scrutinized by the trial court. Evidence not formally offered during the trial cannot be used for or against a party litigant. Neither may it be taken into account on appeal."

In addition, We cannot agree with petitioner's assertion that the aforesaid documents should be considered by the Court *En Banc* by invoking the case of *BPI- Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax and the Commissioner of Internal Revenue*,[23] as in that given case petitioner attached its Return when it filed its Motion for Reconsideration with the Court in Division and not with the Court *En Banc*. The Court *En Banc* shall only consider evidence which were presented in the Court in Division. Based on Section 2(a) Rule 4 of the 2005 Revised Rules of the CTA, as amended, the jurisdiction of the Court *En Banc* is limited to review by appeal on "Decisions or resolutions on motions for reconsideration or new trial of the Court *En Banc* in Division."[24]

Therefore, based from all the foregoing, the Court cannot admit and consider the attached documents for its reconsideration.

Now proceeding to the second issue, in a claim for refund on zero-rated sales, petitioner must not take Section 112(A) of the 1997 NIRC, as amended in isolation. In a claim for refund, equally important is Section 110 of the 1997 NIRC, as amended, which provides as follows:

"SEC. 110. Tax Credits. –

(A) Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

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[23] G.R. No. 122480, April 12, 2000, 330 SCRA 507.

[24] Sec. 2. *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(b) Purchase of services on which a value-added tax has been actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

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(B) Excess Output or Input Tax. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided,* That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

From the foregoing, it is obligatory on the part of petitioner to declare the input VAT in the corresponding taxable quarters when the purchases of goods were consummated, as evidenced by VAT official receipts. This is likewise in keeping with the Court's Decision in the case of *Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue,*[25] which this Court finds no reason to depart from. The pertinent portions of which are hereunder quoted to wit:

"We agree with the respondent.

The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and

[25] CTA Case Nos. 6368 and 6480, December 15, 2004.

official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:

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It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.

In a resolution of the case entitled *Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6168, promulgated on July 28, 2004, this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, i.e., upon issuance by the seller of the VAT official receipt evidencing receipts of the payment for services performed or yet to be performed.

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT

> invoice and for payment of services, as evidenced by VAT official receipt.'
>
> Applying the above ruling, petitioner's claimed input VAT in the amount of P865,020.72 cannot be considered since the input taxes should have been declared in the corresponding taxable quarter when the purchases or importation of goods of properties were consummated pursuant to Section 110 (A) in relation to Section 112 (A) of the NIRC of 1997, as amended."

In the instant case, as correctly found by the Court in Division, petitioner failed to show that it declared its input VAT in the corresponding taxable quarters when the purchases of goods were consummated. Based on records, the claimed amount of P1,306,274.00[26] was not dated on the date when the purchased goods were consummated. Thus, applying the doctrine in the case of *Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue*,[27] We cannot consider this claim.

Anent the third issue, while we agree with petitioner that Sections 110(A)[28] and 113(A)[29] of the 1997 NIRC, as amended, and Sections 4.110-8[30] and 4.113-1[31] of Revenue Regulations No. 16-2005,[32] dated

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[26] Exhibit "H," not dated within the taxable quarter but dated within the taxable year.

[27] CTA Case Nos. 6368 and 6480, December 15, 2004.

[28] Sec. 110. *Tax Credits.* –
(A) Creditable Input Tax. –
(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

[29] Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
(A) *Invoicing Requirements.* – A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

[30] SEC. 4.110-8. *Substantiation of Input Tax Credits.* --
(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.
(2) For the domestic purchase of goods and properties – invoice showing the information required under Sections 113 and 237 of the Tax Code.

[31] 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
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

September 1, 2005, do not require Import Entry and Internal Revenue Declaration ("IEIRD") to be machine validated, paragraphs 2.3 and 2.3.1 Customs Administrative Order No. 2-95, dated September 8, 1995, require IEIRDs to be machine validated as proof of payment, to wit:

> "September 8, 1995
>
> CUSTOMS ADMINISTRATIVE ORDER NO. 2-95
>
> xxx xxx xxx
>
> 2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, the amount of duty and tax collected including other required information must be machine validated directly on the following import documents and signed by the duly authorized bank official:
>
> 2.3.1. Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes."

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:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

[32] Consolidated Value-Added Tax Regulations of 2005.

Therefore, the IERD's must be machine validated in order to be considered as proof.

Furthermore, petitioner recognizes that the importation of goods must be supported by "import entry or other equivalent document showing actual payment of VAT on the imported goods. Based from the foregoing, actual payment of VAT on the imported goods can be shown only if the IEIRDs were machine validated. Since the IEIRDs' were not machine validated, actual payment could not have been possibly made by petitioner.

Thus, We agree with the Court in Division in disallowing the refund of input taxes supported by IEIRDs without machine validation.

In sum, the Court *En Banc* finds no cogent reason to rule the contrary.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision and Resolution respectively dated April 17, 2012 and August 31, 2012, are hereby **AFFIRMED** in *toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice