REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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PHILEX MINING CORPORATION, Petitioner,	**CTA EB No. 2497** (CTA Case No. 10037)
	Present:
- versus -	**DEL ROSARIO,** P.J., **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** and **FERRER-FLORES,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 15 2023 11:13am

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RESOLUTION

UY, J.:

For resolution is respondent's *Motion for Reconsideration (Re: Decision dated 29 September 2022)*[1] filed on October 18, 2022, with petitioner's *Comment (Re: Respondent's Motion for Reconsideration dated 18 October 2022)*[2] filed on November 29, 2022.

In the said *Motion*, respondent prays: 1) that the *Decision* dated September 29, 2022 be reversed and set aside; and 2) a new order be issued denying petitioner's claim for refund. The dispositive portion of the assailed *Decision* reads:

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[1] EB Docket, pp. 154 to 159.
[2] EB Docket, pp. 165 to 175.

***Decision* dated September 29, 2022:**

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. The *Decision* dated January 5, 2021, and the *Resolution* dated June 15, 2021, rendered by the Second Division of this Court in CTA Case No. 10037, are hereby **MODIFIED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the amount of **₱9,691,475.66**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2017.
>
> **SO ORDERED**."

Respondent's arguments:

In his *Motion*, respondent avers that bereft of the documentary and invoicing requirements for input value-added tax (VAT) refund, petitioner's claim must be denied.

Allegedly, petitioner failed to fully comply with the requirements for substantiation of its claim for refund. Considering that the documents presented by petitioner were not original nor certified true copies of the original, it is correct to exclude such documents from forming part of petitioner's evidence.

According to respondent, even if the commercial invoices are only photocopies, it is still not correct to admit the same considering that these documents are supposed to be validated because these emanated from transactions outside the Philippines, and copies thereof are available.

Finally, respondent posits that refund of input VAT is only proper when the input VAT attributable to zero-rated sales exceeds output VAT, which petitioner failed to show.

Petitioner's counter-arguments

Petitioner counter-argues that in the *Decision* dated January 5, 2021, the Court in Division meticulously went over petitioner's evidence supporting its zero-rated export sales and found that petitioner was able to satisfactorily prove that it generated zero-rated export sales in the total amount of ₱8,988,058,805.74 for calendar year (CY) 2017. This effectively renders moot the supposed findings of the VAT Credit Audit Division and the Tax Audit Review Division of the Bureau of Internal Revenue (BIR) as this Court is not bound by the findings of the BIR. The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

Moreover, petitioner stresses that the Court *En Banc* has made it very clear that the invoicing requirements found in the National Internal Revenue Code (NIRC) of 1997, as amended, do not apply to goods purchased outside the Philippines.

THE COURT *EN BANC*'S RULING

Respondent's *Motion* lacks merit.

Petitioner was able to considerably comply with the requirements to substantiate its claim for refund.

In the assailed *Decision*, the Court *En Banc* enumerated the requisites which must be complied with by the taxpayer-applicant in order to successfully obtain a credit/refund of input VAT.

With respect to substantiation of output VAT, it must be shown that the taxpayer is engaged in zero-rated or effectively zero-rated sales[3] (*fourth* requisite), and that for zero-rated sales under Sections 106(A)(2)(a)(1) and (2); 106(B); and (108)(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with Bangko Sentral ng Pilipinas rules and regulations[4] (*fifth* requisite).

On the other hand, with respect to input VAT, it must be shown that the input taxes are due or paid[5] (*seventh* requisite).

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[3] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.
[4] *Ibid.*
[5] *Ibid.*

To recall, the Court *En Banc* affirmed the findings of the Court in Division with respect the *fourth* and *fifth* requisites that petitioner was able to establish that its export sales of goods for CY 2017, in the reduced amount of ₱8,988,058,805.74 (out of the total reported zero-rated sales of ₱10,714,206,566.18), qualify as VAT zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Meanwhile, it bears reiterating that the invoicing requirements under Sections 110[6] and 113[7] of the NIRC of 1997, as amended, are applicable only to VAT-registered persons and not to foreign sellers who are not subject to Philippine tax laws and are not VAT-registered.

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[6] "SECTION 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:
xxx xxx xxx."

[7] "SECTION 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
(A) *Invoicing Requirements.* — A **VAT-registered person** shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the **seller is a VAT-registered person**, followed by his Taxpayer's Identification Number (TIN);
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
(b) If the sale is exempt from value-added tax, 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%) value-added tax, 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 value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In the case of sales in the amount of One thousand Pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.
xxx xxx xxx." *(Emphasis supplied)*

The foreign sellers, who in this case are the sellers of capital goods exceeding ₱1,000,000.00 which were acquired by the purchaser through importation, and the sellers of the imported goods other than capital goods, are not bound to comply with the VAT invoicing requirements under Section 113 of the NIRC of 1997, as amended, because they are not subject to Philippine tax laws. Considering that the foreign sellers of the imported goods are not registered with the BIR, hence, not VAT-registered, they cannot be expected to issue VAT invoices.

Consequently, with respect to the amortization of input VAT on capital goods exceeding ₱1,000,000.00 in the amount of ₱12,329,703.07, it is of no moment that the **corresponding commercial invoices** attached to the Bureau of Customs (BOC) Statement of Settlement of Duties and Taxes (SSDTs) / Single Administrative Documents (SADs) are mere photocopies because SSDTs and SADs are sufficient to prove actual payment of VAT on the imported goods. VAT invoices are not required considering that the foreign sellers are not subject to Philippine tax laws; thus, not required to issue VAT invoices.

As such, only the total amount of ₱333,682.53[8] was disallowed due to petitioner's failure to meet the invoicing and substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Section 4.110-8[9] of Revenue Regulations (RR) No. 16-2005, as amended.

Meanwhile, with respect to the input VAT from importation of goods other than capital goods in the amount of ₱60,930,844.93 which were disallowed on the ground that the BOC SSDTs/SADs were among the exhibits that were denied admission in the Court in Division's *Resolution* dated December 2, 2019 (for being mere

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[8] The breakdown can be found in the *Decision* dated September 29, 2022, EB Docket, p. 143.

[9] "SEC. 4-110.8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchases 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 purchases of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx." *(Emphasis supplied)*

photocopies), it bears noting that in the said *Resolution*, what was disallowed were the **commercial invoices** issued by the suppliers and attached to the BOC SSDTs/SADs, and not the SSDTs/SADs themselves. Again, it is inconsequential that the commercial invoices are mere photocopies because SSDTs and SADs are sufficient to prove actual payment of VAT on the imported goods. VAT invoices are not required considering that the foreign sellers are not subject to Philippine tax laws; thus, not required to issue VAT invoices.

Accordingly, only the total amount of ₱149,961.00[10] was disallowed due to petitioner's failure to meet the invoicing and substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Section 4.110-8 of RR No. 16-2005, as amended.

In sum, petitioner was able to substantiate its claim for refund, save for the amounts stated above.

Petitioner's input VAT attributable to its zero-rated sales exceeded its output VAT still due.

As shown in the assailed *Decision*, petitioner's output VAT still due after deducting the valid input VAT attributable to sales subject to 12% VAT from the output VAT due, amounts to ₱4,455,036.00,[11] while petitioner's valid input VAT attributable to valid zero-rated sales amounts to ₱60,876,019.65.[12] Thus, deducting the output VAT still due from the valid input VAT attributable to valid zero-rated sales, there still remains an excess valid input VAT attributable to valid zero-rated sales in the amount of ₱56,420,983.65. However, considering that respondent had already refunded the amount of ₱46,729,507.99, only the amount of ₱9,691,475.66 must be refunded by respondent to petitioner.

Accordingly, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

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[10] The breakdown can be found in the *Decision* dated September 29, 2022, EB Docket, p. 144.
[11] The breakdown can be found in the *Decision* dated September 29, 2022, EB Docket, pp. 145 to 147.
[12] *Ibid.*

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration (Re: Decision dated 29 September 2022)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice