REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA Case No. 8357**
-versus-	***Members:*** **UY,** *Chairperson, and* **FABON-VICTORINO, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 29 2013 ; 1:30 p.m.

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DECISION

UY, *J.*:

This Petition for Review[1] filed by petitioner, Philex Mining Corporation, against respondent, Commissioner of Internal Revenue, on October 19, 2011, seeks the issuance of a tax credit certificate in the amount of Thirty Million Three Hundred Nine Thousand Two Hundred Thirty-Two Pesos and Fifty Centavos (P30,309,232.50), allegedly representing petitioner's excess and unutilized input value-added tax (VAT) on its importation of goods and domestic purchases of services for the second (2nd) quarter of taxable year 2009.

[1] Docket, pp. 6 to 19.

THE FACTS

Petitioner is a domestic corporation organized under Philippine laws, engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products, consisting of gold bullion and copper ore concentrates. Its principal office is located at 27 Brixton St., Pasig City. Also, petitioner is VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1997, and under Bureau of Internal Revenue (BIR) Form No. 2303 as of January 31, 1997. It likewise has a duly approved Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.[2]

Respondent, on the other hand, 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.[3]

On July 15, 2009, petitioner filed its original Quarterly VAT Return for the second quarter of 2009. Petitioner subsequently filed an amended Quarterly VAT Return on May 18, 2011, which reflected total zero-rated sales of P1,781,765,653.73, importation of goods of P215,255,275.00 with input tax of P25,830,633.00, and purchases of services of P37,321,662.50 with input tax of P4,478,799.50.[4]

On June 15, 2011, pursuant to Section 4.112-1 of RR No. 16-2005, petitioner filed its claim for refund or tax credit with the One-Stop-Shop Center (OSSC) of the Department of Finance (DOF), per Application No. 62440 for the amount of P30,309,232.50.[5]

Due to respondent's inaction on the said administrative claim for refund, petitioner filed the present Petition for Review on October 19, 2011.[6]

Respondent filed her Answer[7] thereto on December 19, 2011, interposing the following special and affirmative defenses:

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[2] Pars. 1 and 3, Summary of Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 47 to 48.
[3] Par. 2, Summary of Facts Admitted, JSFI, Docket. p. 48.
[4] Par. 4, Summary of Facts Admitted, JSFI, Docket, p. 47.
[5] Par. 5, Summary of Facts Admitted, JSFI, Docket, p. 47.
[6] Docket, pp. 6 to 9.

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by the respondent;

5. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

6. 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 National Internal Revenue Code (NIRC) of 1997, 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 Section 113 and 114 of the National Internal Revenue Code (NIRC) of 1997, 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 National Internal Revenue Code (NIRC) of 1997, 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 P30,309,232.50 allegedly representing excess and unutilized input taxes for the 2nd Quarter of 2009, were:

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[7] Docket, pp. 25 to 28.

1. Paid by petitioner;
2. Attributable to its zero-rated or effectively zero-rated sales; and
3. Such input taxes paid should not have been applied against any output tax.

E. The petitioner's claim for tax refund allegedly representing excess and unutilized input taxes for the 2nd Quarter of 2009 in the amount of P30,309,232.50 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 National Internal Revenue Code (NIRC) of 1997, as amended.

7. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims and of showing, by words too plain to be mistaken, that the legislature intended to exempt them;

8. And 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. 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." *(Citations omitted)*

During pre-trial held on February 3, 2012[8], both parties' counsel appeared and entered into stipulation of facts and issues, identification of documentary evidence and names of the parties' witnesses. Thereafter, as directed by the Court, the parties submitted their Joint Stipulation of Facts and Issues[9], on February 23, 2012, which was approved by the Court in the Resolution[10] dated March 1, 2012.

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[8] Minutes of Pre-trial held on February 3, 2012, Docket, pp.37 to 38.
[9] Docket, pp. 47 to 49.
[10] Docket, pp. 51 to 52.

On March 27, 2012 , upon motion of petitioner[11], Milagros F. Padernal was commissioned by the Court as Independent Certified Public Accountant (CPA)[12] pursuant to Rule 13 of the Revised Rules of the Court of Tax Appeals, as amended.

Thereafter, the Court issued a Pre-trial Order dated May 14, 2012[13] which shall govern the proceedings in this case.

During trial, petitioner presented two (2) witnesses in support of its refund claim, namely: Eileen C.Rodriguez and the Court-commissioned Independent CPA Milagros F. Padernal.

On the other hand, during the supposed initial presentation of respondent's evidence, counsel for respondent manifested that she will no longer present evidence and instead asked for a period of thirty (30) days to file her Memorandum.[14] Consequently, the Court granted the parties a period of thirty (30) days within which to file their respective Memoranda in the Resolution[15] dated January 22, 2013.

In the Resolution dated March 22, 2013, this case was submitted for decision taking into consideration petitioner's Memorandum[16] filed on February 11, 2013, and respondent's Memorandum[17] submitted on March 21, 2013.

Subsequently, however, petitioner filed a Rejoinder to respondent's Memorandum on April 8, 2013. The Court, in the Resolution dated April 25, 2013, noted that petitioner filed its Rejoinder without the appropriate motion as required under Section 9 of Rule 15 of the 1997 Rules of Civil Procedure; which applies suppletorily to the proceedings in this Court. Thus, the Court gave petitioner a period of ten (10) days to comply with the said rule.

On May 16, 2013, petitioner filed its Motion for Leave to File a Rejoinder to respondent's Memorandum, praying that attached Rejoinder (To Respondent's Memorandum be admitted). In the Resolution dated June 11, 2013, petitioner's Rejoinder was admitted

[11] Motion to Commission Independent Auditor filed on February 9, 2012, Docket, pp. 42 to 45.
[12] Minutes of the Hearing, March 27, 2012, Docket, pp. 54 to 55.
[13] Pre-Trial Order dated May 14, 2012, Docket, pp. 104 to 111.
[14] Minutes of the Hearing dated January 22, 2013, Docket, p. 179 to 180.
[15] Docket, p. 182.
[16] Docket, pp. 183 to 196.
[17] Docket, pp. 202 to 209.

and made part of the case records for the Court's consideration in resolving the instant petition.

Hence, this Decision.

THE ISSUE

The sole issue jointly stipulated by the parties for this Court's resolution is:[18]

> "Whether or not Petitioner is entitled to the refund or tax credit of the alleged excess and unutilized input taxes in the total amount of ₱30,309,232.50 for the 2nd quarter of 2009 due to Petitioner being an exporter of mineral products."

Petitioner's arguments:

Petitioner claims that it is entitled to the refund of its alleged excess input VAT for the 2nd quarter of 2009 because it has complied with all the requirements provided under Section 112(A) of the NIRC of 1997, as amended, to wit: (1) that it is VAT-registered as shown by VAT Registration Certificate No. 35-6-000731; (2) that its sales and shipments of mineral products to foreign buyers are zero-rated based on Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended; (3) that said zero-rated transactions are supported by invoices, export declarations, and bank certificates confirming inward remittances of export proceeds; (4) that the excess input VAT claimed were not applied against any output VAT liability; and (5) that both its administrative and judicial claims were timely filed with the One-Stop-Shop Center of the Department of Finance on June 15, 2011 and with this Court on October 19, 2011.

Petitioner maintains that requisites for refund of unutilized input VAT attributable to zero-rated sales are limited to those mentioned in Section 112(A) of the NIRC of 1997, as amended. Thus, respondent's position, requiring petitioner to comply with the invoicing and accounting requirements, including the filing of monthly VAT declarations under Revenue Regulation No. 16-2005 and to submit supporting documents for its administrative claim as additional requirements for input VAT refund, has no legal basis.

[18] Statement of the Issues, JSFI, Docket, p. 48.

Nevertheless, even assuming without admitting that it failed to comply with the accounting and reportorial requirements, petitioner insists that respondent's recourse is to claim for civil and criminal penalties provided under Title X of the NIRC but certainly not to deny petitioner's claim for input VAT refund.

Finally, petitioner points out that it is contrary to all that is fair and just for respondent to intimate or suggest that petitioner failed to submit supporting documents when all the while, these documents were submitted, together with the filing of the application, which are in the possession of the One Stop Shop Center (OSSC) of the Department of Finance, and which respondent subsequently failed to transmit to the Court in violation of Rule 6, Section 5(b) of the Revised Rules of the Court of Tax Appeals.

Respondent's counter-arguments:

For her part, respondent argues that for a claim of refund of excess input VAT may be granted, petitioner should comply with the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of monthly VAT pursuant to the provisions of Sections 113 and 114 of the NIRC of 1997, as amended. Respondent also stresses that petitioner failed to prove with certainty that it complied with the submission of complete documents in support of the administrative claim for tax refund as provided under Section 112(C) of the NIRC of 1997, as amended. Failure to prove the submission of complete documents is fatal to petitioner's claim for refund.

Moreover, respondent contends that the amount allegedly representing petitioner's excess and unutilized input taxes for the 2nd Quarter of 2009 were not supported by official receipts. Respondent further asserts that petitioner failed to prove with certainty that the said unutilized input VAT were attributable to its zero-rated sales.

THE COURT'S RULING

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

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

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

Qualifications for zero-rating of petitioner's export sales.

Petitioner claims that its shipments and sales of mineral products to its foreign buyers are VAT 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);"

Succinctly put, the following conditions must be present for an export sale to qualify as zero-rated:

1. that there was sale and actual shipment of goods from the Philippines to a foreign country;
2. that the sale was made by a 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.

The above cited provision must be read in conjunction with Section 113 of the NIRC of 1997, as amended, requiring a VAT-registered person, like herein petitioner, to issue, for every sale, barter or exchange, an invoice containing 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

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(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;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" *(Emphasis supplied)*

Correspondingly, Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations No. 16-05, as amended, provides:

"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.
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> 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."

As can be gleaned from the foregoing provisions, any VAT-registered person claiming 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. Furthermore, sales invoices representing export sales must be duly registered with the BIR and contain all the information required by law, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Petitioner's zero-rated sales

In the case at bench, the existence of zero-rated sales are reflected in petitioner's amended Quarterly VAT Return for the second quarter of 2009 in the total amount of P1,781,765,653.73.[19] The Court-commissioned Independent CPA noted in her Amended

[19] Exhibit "M-1", line 17.

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Report[20] dated June 22, 2012, that petitioner's zero-rated sales consisted of sales of copper and gold to the following customers:

Sales of Copper:	(in US dollars)
Pan Pacific Copper Co., Ltd.	35,471,798.00
Louis Dreyfus Commodities Metals Suisse (Exhibits "P" and "P-1")	1,617,848.00
Total	37,089,646.00
Sales of Gold:	
Heraeus Ltd.	166,189.00
TOTAL	**US$37,255,835.00**

Per petitioner's Schedule of Export Sales[21], the amount of US$37,255,835.00 is broken down as follows:

Provisional Invoice No.	**Exhibit**	**Final Invoice No.**	**Exhibit**	**Consignee**	**Amount Recorded in the General Ledger for the Current Quarter**
Provisional Billings for Direct Export Sales of Copper					
PX – 2651	E-1-b	PX – 2566	E-1-c	Pan-Pacific Copper Co., Ltd.	P 13,982,179.00
PX – 2565	E-2-b	PX – 2572	E-2-c	Pan-Pacific Copper Co., Ltd.	16,183,099.00
Provisional Billings for Direct Export Sales of Gold					
Pad Aurex 115	E-3-b	Pad Aurex 115	E-3-c	Heraeus Ltd.	166,189.00
Subtotal					P 30,331,467.00
Catch-up Adjustment to Prior Quarter's Shipments					
PX – 2547	E-4-b	PX – 2560	E-4-c	Pan-Pacific Copper Co., Ltd.	P 102,442.00
PX – 2549	E-5-b	PX – 2562	E-5-c	Pan-Pacific Copper Co., Ltd.	2,001,279.00
PX – 2551	E-6-b	PX – 2563	E-6-c	Pan-Pacific Copper Co., Ltd.	1,404,139.00
PX – 2554	E-7-b	PX – 2564	E-7-c	Pan-Pacific Copper Co., Ltd.	629,278.00
PX – 2556	E-8-b	PX – 2567	E-8-c	Pan-Pacific Copper Co., Ltd.	1,169,382.00
PX – 2558	E-9-b	PX – 2568	E-9-c	Louis Dreyfus Commodities Metals Suisse SA	463,009.00
PX – 2559	E-10-b	PX – 2574	E-10-c	Louis Dreyfus Commodities Metals Suisse SA	1,154,839.00
Subtotal					P 6,924,368.00
Total					**P37,255,835.00**

[20] Exhibit "D", p. 2.
[21] Exhibit "E".

Based on the evidence presented by petitioner, the Court finds that petitioner complied with all the requirements for VAT zero-rating to the extent of P1,696,443,828.26, out of its total reported zero-rated sales of P1,781,765,653.73 arising from its export sales for the second quarter of taxable year 2009.

As stipulated by the parties, petitioner is VAT-registered with VAT Registration Certificate No. 35-6-000731effective October 29, 1997, and had its application for zero-rate approved effective April 12, 1998. [22]

For the second quarter of 2009, petitioner actually shipped its mineral products abroad to its foreign buyers and generated export sales therefrom as shown in petitioner's Schedule of Export Sales[23] and various export documents such as zero-rated VAT provisional[24] and final[25] sales invoices, bills of lading[26], and export declarations[27]. Likewise, the foreign currency proceeds derived from said export sales were inwardly remitted and accounted for in accordance with the rules and regulations of the BSP as evidenced by the bank certifications[28], entries in petitioner's passbook in local banks of the payments received[29], and Summary of Sales and Remittances[30] for the second quarter of 2009.

However, as aptly observed by the Court-commissioned Independent CPA, petitioner's Final Invoice Nos. PX-2568[31] and PX-2574[32], pertaining to its sales to Louis Dreyfus Commodities Metals Suisse SA, are not duly registered with the BIR. The Court notes that as per BIR Permit No. OCN3AU0000030052, issued on April 19, 1999, petitioner is authorized to print sales invoices with serial numbers ranging from PX2101-PX2500. Clearly, Final Invoice Nos. PX-2568 and PX-2574 are outside the authority to print granted to petitioner. Similarly, Provisional Invoice No. Pad-Aurex 115[33] and Final Invoice No. Pad-Aurex 115[34], supporting petitioner's sales of

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[22] Par. 3, Summary of Facts Admitted, JSFI, Docket, p. 48.
[23] Exhibit "E".
[24] Exhibits "E-1-b" to "E-10-b".
[25] Exhibits "E-1-c" to "E-10-c".
[26] Exhibits "E-1-a" to "E-10-a".
[27] Exhibits "E-1" to "E-10".
[28] Exhibits "F-1" to "F-7".
[29] Exhibits "F-1-a" to "F-7-a.
[30] Exhibit "F".
[31] Exhibit "E-9-c".
[32] Exhibit "E-10-c".
[33] Exhibit "E-3-b".
[34] Exhibit "E-3-c".

gold to Heraeus Ltd., are outside petitioner's authority to print. Also, said sales invoices do not bear the word "VAT" after petitioner's TIN, as mandated by Section 113 of the NIRC of 1997, as amended.

Thus, not being supported by the proper sales invoice in accordance with Sections 113, 237 and 238 of the NIRC of 1997, as amended, petitioner's sales to Louis Dreyfus Commodities Metals Suisse SA, in the total amount of US$1,617,848.00 (US$463,009.00 plus US$1,154,839.00) and its sales to Heraeus Ltd, in the amount of US$166,189.00, cannot qualify for VAT zero-rating.

As a consequence, only the remaining reported zero-rated sales for the second quarter of 2009 in the amount of US$35,471,798.00 with the peso equivalent of P1,696,443,828.26, as computed below, is subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended:

Declared Zero-Rated Sales in US$		37,255,835.00
Less: Sales to Louis Dreyfus Commodities Metals Suisse SA supported by invoices without BIR permit to print		
Invoice No. PX-2568 (Exhibit "E-9-c")	463,009.00	
Invoice No. PX-2574 (Exhibit "E-10-c")	1,154,839.00	
Sales to Heraeus Ltd. (Exhibits "E-3-b" and " E-3-c")	166,189.00	1,784,037.00
Valid Zero-Rated Sales in US$		35,471,798.00
Multiplied by Average peso to dollar rate:		
Declared Zero-Rated Sales in Peso	1,781,765,653.73	
Declared Zero-Rated Sales in US$	37,255,835.00	
Average peso to dollar rate		47.82514346
Valid Zero-Rated Sales in Peso		**1,696,443,828.26**

Given that only the sum of P1,696,443,828.26 qualifies as zero-rated sales, it is but proper that only the portion of the claimed input VAT attributable to such qualified zero-rated sales will be considered for refund. The rate to be applied then should be based on the volume of qualified zero-rated sales over petitioner's total declared zero-rated sales, computed as follows:

Properly substantiated zero-rated sales	P1,696,443,828.26
Divided by total zero-rated sales per VAT Returns	P1,781,765,653.73
Rate	**95.2113890 %**

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Petitioner's creditable input tax attributable to zero-rated sales.

After having resolved that petitioner's export sales for the second quarter of taxable year 2009 in the total amount of P1,696,443,828.26 are zero-rated, the Court proceeds to determine the amount of input tax attributable thereto and if said input taxes were applied against any output VAT liability of petitioner.

Petitioner's amended Quarterly VAT Return for the second quarter of 2009[35] reflected an input VAT of P25,830,633.00 on importations and input VAT of P4,478,599.50 on domestic purchases of services or a total of P30,309,232.50, as shown below:

	Purchases	Input Tax
Importations of Goods Other than Capital Goods	P 215,255,275.00	P 25,830,633.00
Domestic Purchase of Services	37,321,662.50	4,478,599.50
Total	**P252,576,937.50**	**P30,309,232.50**

In the Independent CPA's Report, petitioner's input VAT claim of P30,309,232.50 was further broken down as follows[36]:

Input Taxes on Importations of Goods	
Supported by original BCORs/BDAs/BORs and IEIRDs	
Dated in the second quarter of 2009 (Exh. "G-1" to "G-59-a")	P 21,264,859.00
Out-of-period receipts dated first quarter of 2009 (Exh. "G-60" to "G-68-a")	373,644.00
Supported by original BCORs/BDAs/BORs only	
Dated in the second quarter of 2009 (Exh. "H-1")	34,421.00
Out-of-period receipt dated fourth quarter of 2008 (Exh. "H-2')	8,488.00
Supported by original IEIRDs only	
Dated in the second quarter of 2009 (Exh. "I-1" to "I-2")	3,346,417.00
No supporting documents	802,804.00
Subtotal	**P25,830,633.00**
Input Taxes on Domestic Purchases of Services	
Supported by original VAT Official Receipts	
Dated in the second quarter of 2009 (Exh. "K-1" to "K-89")	P 3,423,768.07

[35] Exhibit "M-1".
[36] Exhibit "D", p. 5.

Out-of-period receipts	
Dated in the first quarter of 2009 (Exh. "K-90" to "K-127")	21,111.11
Dated in the third quarter of 2009 (Exh. "K-128")	184.29
No supporting VAT official receipts (Exh. "L")	1,033,536.03
Subtotal	**P 4,478,599.50**
Total	**P30,309,232.50**

Based on the Independent CPA's findings, petitioner's claim in the amount of P2,239,767.43 is disallowed for the reasons summarized as follows:

	Importation	**Domestic**	**Total**
Supported by original BCORs/BDAs/BORs and IEIRDs dated 1st quarter of 2009	P 373,644.00	-	P 373,644.00
Supported by original BCORs/BDAs/BORs only dated 4th quarter of 2008	8,488.00	-	8,488.00
Supported by original VAT Official Receipts dated 1st quarter of 2009	-	P 21,111.11	21,111.11
Supported by original VAT Official Receipts dated 3rd quarter of 2009		184.29	184.29
No supporting VAT official receipts	-	1,033,536.03	1,033,536.03
No supporting documents	802,804.00	-	802,804.00
Total	**P1,184,936.00**	**P1,054,831.43**	**P2,239,767.43**

Section 110(A)(1)(b) of the NIRC of 1997, as amended, provides:

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

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person 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."

Additionally, Section 4.110-2 of Revenue Regulation No. 16-05 states:

"SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* – The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of the goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee."

It is clear from the above-quoted provision and regulation that the input tax on the importation of goods shall be creditable to the importer upon payment of the VAT prior to the release of the goods from the custody of the Bureau of Customs (BOC), that is, upon the issuance of the BOC or bank official receipt. Likewise, the input tax on the purchase of services is creditable to the purchaser upon payment of the VAT on the services, that is, upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed. Therefore, it was indubitable on the part of petitioner to declare the input taxes on

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importation of goods and purchase of services in the taxable quarter when the VAT payments on importation and purchase of services were made.

Consequently, the input taxes on petitioner's importation of goods in the amounts of P373,644.00 and P8,488.00 as well as the input taxes on its domestic purchases of services in the amount of P21,111.11 and P184.29, which are supported by receipts dated outside the period of claim, *viz.*, fourth quarter of 2008, first and third quarters of 2009, shall be disallowed because these should have been declared in the respective quarters when the VAT payments on the imported goods and purchase of services were made.

In addition, petitioner's claimed input taxes on importation of goods in the amount of P802,804.00 and input taxes on domestic purchases of services in the amount of P1,033,536.03, which do not have supporting BOC or bank official receipts or machine-validated Import Entry and Internal Revenue Declarations and VAT official receipts, respectively, shall be disallowed following Section 110(A) in relation to Section 113(A)(2) of the NIRC of 1997, as amended.

Therefore, only the amount of P28,069,465.07 out of the P30,309,232.50 input VAT claim represents petitioner's valid and refundable input tax for the second quarter of 2009, computed as follows:

	Input VAT on Importation of Goods	**Input VAT on Domestic Purchases of Services**	**Total**
Input VAT Claimed	P 25,830,633.00	P 4,478,599.50	P 30,309,232.50
Less: Disallowances	1,184,936.00	1,054,831.43	2,239,767.43
Valid Input VAT	**P24,645,697.00**	**P3,423,768.07**	**P28,069,465.07**

Petitioner's input taxes were not applied against any output VAT liability

Anent the question as to whether or not petitioner's input taxes were applied against any output tax liability, We rule in the affirmative.

Petitioner's amended Quarterly VAT Return shows that petitioner had an output tax liability of P527,702.88[37] for the second quarter of 2009 against which the input VAT of P28,069,465.07 shall be applied or credited. As a result, only the remaining input VAT of P27,541,762.19 can be attributed to zero-rated sales declared by petitioner. Hence, applying the ratio of substantiated zero-rated sales previously computed, petitioner's refundable excess input taxes amount to P26,222,894.35, computed thus:

Substantiated excess input VAT	P 27,541,762.19
Ratio of substantiated zero-rated sales to declared zero-rated sales	95.2113890 %
Excess Input VAT Attributable to Valid Zero-Rated Sales	**P 26,222,894.35**

In addition, although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[38] from the third quarter of 2009 to the first quarter of 2011, the same remained unutilized until it was deducted in its Quarterly VAT Return for the first quarter of 2011, as "VAT Refund/TCC Claimed"[39] from the total available input tax of P331,228,457.21[40]. Thus, the claimed input taxes for the second quarter of 2009 could not have been carried over or utilized in the succeeding second quarter of 2011.

Submission of complete documents in the administrative level and compliance with the accounting and reportorial requirements.

Respondent asseverates that petitioner's claim must be denied because it failed to prove with certainty that it complied with the submission of complete documents in support of its application for refund. According to respondent, failure to prove submission of complete documents is fatal in the case at bar and will constitute as another one of the many reasons for not granting petitioner's claim for refund.[41]

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[37] Exhibit "M-1", line 19B.
[38] Exhibits "M-2" to "M-8".
[39] Exhibit "M-8", line 23D.
[40] Exhibit "M-8", line 22.
[41] Docket, p. 207.

Respondent's contention deserves scant consideration.

At the outset, nothing on record shows that respondent notified petitioner of its failure to submit supporting documents or required petitioner to submit additional documents to support the administrative claim for VAT refund. Thus, the 120-day period commenced and continued to run from June 15, 2011, the date when petitioner submitted its administrative claim. This is in accordance with Revenue Memorandum Circular No. 029-09, which states that:

> "III. *Period within which Refund or Tax Credit of Input Taxes shall be Made*
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> Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining 'proper cases' in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
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> a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
> b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Office (RO) for audit/verification;
> c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and
> d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.
>
> **In cases where taxpayer failed to comply with the above conditions/requirements**, *i.e.*, failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer

> refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer**. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request *(Emphasis supplied)."*

Moreover, well-settled is the rule in claims for VAT refund that the alleged non-submission of complete supporting documents in the administrative level is NOT fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court. [42]

In fine, it bears emphasizing that cases filed before this Court, being a court of record, are litigated *de novo* and party litigants should prove every minute aspect of their cases. [43] Judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR.[44] At this juncture, it is worthy to note that respondent, during trial, elected to submit this case for decision without presenting any evidence to prove its allegations or to refute petitioner's right to a refund or tax credit.

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[42] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB Case No. 589 (CTA Case No. 7471), September 15, 2010; *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue,* CTA Case No. 7800, January 12, 2012.

[43] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179356, December 14, 2009145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[44] *Commissioner of Internal Revenue vs. Philippine Airlines,* CTA EB Case No. 775 (CTA Case No. 7828), July 24, 2012.

Similarly, We cannot sustain respondent's contention that petitioner's failure to establish compliance with the accounting and reportorial requirements imposed upon VAT registered taxpayers are sufficient grounds to deny petitioner's judicial claim for refund.

Even without offering in evidence petitioner's subsidiary sales journal, subsidiary purchase journal, and monthly VAT declarations, records manifestly show that petitioner submitted sufficient proof of its entitlement to a tax refund or issuance of tax credit certificate, representing unutilized excess input VAT attributable to its zero-rated receipts for the second quarter of 2009, albeit in the reduced amount of P26,222,894.35.

At any rate, if indeed petitioner failed to comply with the said accounting and reportorial requirements, respondent can go after petitioner for the civil and criminal penalties provided under Title X of the NIRC of 1997, as amended.[45]

Petitioner timely filed its claim for refund within the two-year prescriptive period.

As regards the timeliness of the filing of petitioner's administrative and judicial claims, the Court notes that compliance therewith was stipulated by the parties in paragraph 5 of their Joint Stipulation of Facts and Issues, to wit:

> "5. Pursuant to section 4.112-1 Revenue Regulations No. 16-2005, Petitioner filed its claim for refund/tax credit with the One Stop Shop Center of the Dept. of Finance (OSS) on June 15, 2011, per Application No. 62440 for the amount of P30,309,232.50, **which filing is well within the two-year period prescribed in sec. 112(A) of the Tax Code.** (*Emphasis and underscoring supplied*)."

Based on the foregoing expressed admission of the parties, and finding the same to be in accord with legal requirements, the

[45] See *Philex Mining Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8228, July 24, 2012.

Court finds no need to further elaborate on the details pertaining to the timeliness of petitioner's administrative and judicial claim.

WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of Philex Mining Corporation, the reduced amount of **TWENTY-SIX MILLION TWO HUNDRED TWENTY-TWO THOUSAND EIGHT HUNDRED NINETY-FOUR and 35/100 PESOS (P26,222,894.35)**, representing petitioner's excess input VAT attributable to its zero-rated sales for the second quarter of 2009.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

A T T E S T A T I O N

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Special First Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice