REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 8553 & 8562

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
JUN 2 4 2015 10:50 am

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RESOLUTION

COTANGCO-MANALASTAS, *J.*:

For resolution is respondent's *Motion for Reconsideration (Decision of 31 March 2015)* filed on April 16, 2015 with petitioner's *Opposition/Comment* filed on May 7, 2015.

Respondent seeks reconsideration of this Court's Decision[1], promulgated on March 31, 2015, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount of ₱51,734,898.99, representing its unutilized and excess input VAT attributable to its zero-rated sales for the second and third quarter of 2010.
>
> **SO ORDERED.**"

Respondent's motion is based on the following grounds:

[1] Docket, pp. 247-276.

First, the filing of the judicial claim for refund is premature.

Second, petitioner failed to comply with the accounting requirements. The checklist of the documents submitted to the One Stop Shop of the Department of Finance was not presented. It is the burden of petitioner to prove that the complete documents were submitted. Moreover, the requirements of maintaining a subsidiary sales journal and subsidiary purchase journal on which every sale or purchase is recorded and filing of monthly VAT declarations are not additional requisites which need further legislations, as alleged by petitioner.

Lastly, claims for refund are strictly construed against the taxpayer.

In its opposition/comment, petitioner counter-argues that the Court already passed upon and thoroughly discussed the timeliness of the filing of the petition. Respondent's contention is a clear distortion of what Section 112(C) of the National Internal Revenue Code (NIRC) provides. Moreover, the CTA *En Banc* has already ruled that the presentation of the subsidiary purchase journal is not required for refund of input tax attributable to zero-rated sales. The fact that claims for refund are strictly construed against the taxpayer is not disputed. However, where sufficient evidence, which are not disputed, are presented in the trial before the Court, there is nothing that the Court can do but to order the refund to the extent that is supported by evidence.

After weighing the parties' arguments, this Court finds no compelling reason to reverse or modify the assailed Decision.

Anent the first ground, as correctly pointed out by petitioner, the Court has already thoroughly discussed the timeliness of the filing of the petition.

Respondent argues that the thirty (30) day rule is not applicable because there is no decision yet of the Commissioner of Internal Revenue (CIR) that will serve as the reckoning period of the 30 days.

To reiterate, Section 112(C) of the NIRC of 1997, as amended, provides as follows:

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

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the **failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days** from the 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**." (*Emphasis supplied*)

After reading the above-quoted provision, *We* are at a loss on how respondent arrived at the interpretation that the taxpayer cannot appeal its claim for refund to the Court since there is no decision yet by the CIR that will serve as the reckoning period of the 30 days. The above provision clearly provides the judicial recourse in the event of a denial of the claim for refund or tax credit by the CIR as well as inaction on his part, *i.e.*, if after the 120-day period the CIR fails to act on the application for refund or tax credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

Anent the second ground, suffice it to say that the issue on petitioner's alleged failure to prove the submission of complete documents has already been extensively discussed and passed upon in the assailed Decision.

With regard to petitioner's failure to prove that it maintains subsidiary sales journal and subsidiary purchase journal and that it files monthly VAT declarations, the Court *En Banc,* in CTA EB Case No. 1116[2], ruled that there is nothing in Section 112(A) of the NIRC of 1997 which requires the presentation of subsidiary sales journal and subsidiary purchase journal in order that the taxpayer may be entitled to

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[2] *CIR vs. Philex Mining Corporation*, Decision dated January 7, 2015.

refund, or issuance of tax credit certificate, of its claimed input tax attributable to zero-rated sales.

In judicial proceedings, 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.[3] In this case, records reveal that petitioner has sufficiently proven its entitlement to a refund for its unutilized input VAT attributable to its zero-rated sales for the second and third quarter of 2010 in the amount of ₱51,734,898.99. Hence, non-submission of petitioner's subsidiary sales journal, subsidiary purchase journal and monthly VAT declarations is not sufficient to deprive petitioner of its right to said refund.

It is true that tax refunds, like tax exemptions, are construed strictly against the taxpayer.[4] Nevertheless, since petitioner was able to present sufficient evidence to prove its claim for refund to the extent of ₱51,734,898.99, then it is entitled to the refund of such amount.

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

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[3] *Philex Mining Corporation vs. CIR*, CTA Case No. 8228, July 24, 2012 citing *CIR vs. Toledo Power Company*, CTA EB Case No. 589, January 12, 2011 Resolution.
[4] *Paseo Realty & Development Corporation vs. Court of Appeals, et al.*, G.R. No. 119286, October 13, 2004.