REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

****

PHILEX MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8314

Members:

UY, *Chairperson, and*
FABON-VICTORINO, *JJ.*

Promulgated:

APR 30 2013 2:00 p.m.

x---x

DECISION

UY, *J*.:

This is a Petition for Review filed by petitioner, Philex Mining Corporation to appeal the inaction of respondent, Commissioner of Internal Revenue, over petitioner's administrative claim for refund in the amount of P43,268,934.51, allegedly representing its excess and unutilized input value-added tax (VAT) on its importation of goods and domestic purchases of services for the first quarter of taxable year 2009.

THE FACTS

Philex Mining Corporation 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. It 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. Petitioner likewise had its Application for Zero-

Rate, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95, approved effective April 12, 1998.[1]

Respondent is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or 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 Building, Diliman, Quezon City.

On April 22, 2009, petitioner filed its Original VAT Return for the first quarter of 2009. On April 29, 2011, petitioner filed an Amended VAT Return, which reflected total zero-rated sales of P2,506,069,926.20, importation of goods of P360,289,376.84 with input tax of P43,234,725.22, and purchases of services of P285,077.42 with input tax of P34,209.29.[2]

Relative thereto, petitioner filed its claim for refund/tax credit with the One Stop Shop (OSS) Center of the Department of Finance per Application No. 62439 in the amount of P43,268,934.51[3] on March 22, 2011, pursuant to Section 4.112-1 of Revenue Regulations No. 16-2005,

The application for refund that petitioner filed with the OSS Center of the Department of Finance is allegedly still pending thereat, and no resolution has been issued up to the filing of the Petition for Review in this case on August 1, 2011.

On October 7, 2011, respondent filed her Answer[4] alleging the following Special and Affirmative Defenses:

"5. Respondent hereby repleads the above admissions and denials as part of her special and affirmative defenses.

6. The Petition for Review does not merit to be given due course. Petitioner failed to prove that it exhausted all administrative remedies before elevating this case to this Honorable Court.

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[1] Pars. 1 and 2, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 95.
[2] Par. 3, JSFI, Docket, p. 95.
[3] Pars. 4 and 5, JSFI, Docket, p. 96.
[4] Answer, Docket, pp. 39-54.

7. Petitioner failed to prove by clear and convincing evidence that the requirements for refund claim were met.

    7.1. There must be a written claim for refund filed by the taxpayer with respondent.

    7.2. The claim for refund must be a categorical demand for reimbursement.

8. A careful reading of the petition for review showed that petitioner failed to prove that it has filed a written claim for refund that must categorically demand reimbursement. Instead, petitioner submitted only Claimant Information Sheet before the One-Stop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, which was attached to the petition as Annex 'C'. Absent a written claim for refund and complete supporting documents, the BIR Commissioner cannot act on the administrative application for refund.

    8.1. Considering that petitioner failed to file a written claim for refund and submit supporting documents to respondent when it filed its application for refund before the office of the One-Stop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, the 120 day period shall not begin to run. The law provides that petitioner had 30 days after the lapse of the 120 days, within which, to elevate its claim before the Honorable Court of Tax Appeals. However, in the instant case, the 120 days has not commenced, hence this Honorable Court has no jurisdiction over the instant petition for review filed by petitioner.

9. The specific provisions of law governing the periods for filing of judicial claims of excess unutilized input taxes attributable to VAT zero-rated sales is Section 112 (D) (now Section 112 (C), as amended by R.A. 9337) of the

National Internal Revenue Code (NIRC) of 1997. The said Section provides:

> **'SEC. 112. Refunds or Tax Credits of Input Tax. –**
>
> xxx xxx xxx
>
> (D) *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 **<u>within one hundred twenty (120) days from the date of submission of complete documents in support of the application</u>** filed in accordance with Subsections (A) and (B) 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 one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.'

9.1 Pursuant to the aforequoted Section 112 (C) of the NIRC of 1997, as amended, the Commissioner of Internal Revenue (CIR) has 120 days from the submission of the complete supporting documents to decide the claim for refund. Thus, a taxpayer must first submit the complete supporting documents before the 120-day period should commence. The Bureau of Internal Revenue (BIR) Commissioner cannot decide the application or claim for refund without the complete supporting documents.

9.2 The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency (Laguna CATV Network, Inc. vs. Hon. Alex E. Maraan, Regional Director, Region IV, DOLE, et al., G.R. No. 139492, 19 November 2002). After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because there are matters peculiarly within the competence of the administrative agency.

9.3 The hurried recourse of petitioner to this Honorable Court deprived respondent of the opportunity to fully exercise her function to decide claims for refund, correct, modify or affirm the findings of her subordinates. It must be remembered, that in the case of *Jariol vs. Commission on Elections,* (270 SCRA 255), the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

9.4 The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (*Agpalo Statutory Construction, Third Edition 1995, p. 266*). For this reason, the courts construe these provisions of statutes as mandatory (*Ibid., citing Alvero vs. De la Rosa, 76 Phil. 428, 434*).

9.5 Settled is the rule that the non-exhaustion of administrative remedies is jurisdictional and it renders only the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that a party has no cause of action to ventilate in court (Carale vs. Abarintos, G.R. No. 120704, March 3, 1997). The premature invocation of the court's intervention is fatal to one's cause of action; and absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action (CIR vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007).

10. Petitioner in its application for refund must prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with Section 112 of the Tax Code, as amended. This requires the **submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner for review;

d. That the input taxes of P43,268,934.51 allegedly paid by petitioner on its purchases of goods and services for the period January 1, 2009 to March 31, 2009 or the first quarter of taxable year 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

11. Section 112(D) of the NIRC of 1997 must be read in conjunction with Sections 112(A) and (B), which are hereunder quoted for ready reference:

> **'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: xxx
>
> **(B)** ***Capital Goods***. - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only **within two (2) years after the close of the taxable quarter when the importation or purchase was made**." (*Emphasis supplied*)

11.1 The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any interval revenue tax due **'must be claimed within two years reckoned 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'** (Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation SC-GR No. 172129, Sept. 12, 2008). The reckoning frame would always be the end of the quarter when the pertinent sales or transactions was made, regardless when the input VAT was paid.

11.2 The instant petition is a claim for refund in the amount of Forty Three Million Two Hundred Sixty Eight Thousand Nine Hundred Thirty Four Pesos and 51/100 (P43,268,934.51) allegedly input vat paid by petitioner on its purchases of goods and services covering the period January 1, 2009 to March 31, 2009, the first quarter of taxable year 2009. Applying the above-mentioned provision, petitioner should have filed its administrative claim for refund on or before March 31, 2011.

11.3 Considering that petitioner submitted only Claimant Information Sheet before the One-Stop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, thus, it failed to file a written claim for refund on or before March 31, 2011. Therefore, the right of the petitioner to claim for tax refund or credit of its input vat paid for the period January 1, 2009 to March 31, 2009, the first quarter of taxable year 2009 in the amount of Forty Three Million Two Hundred Sixty Eight Thousand Nine Hundred Thirty Four Pesos and 51/100 (P43,268,934.51) had already prescribed.

12. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

13. It is well established in this jurisdiction that a claim for refund partakes the nature of an exception and is therefore held against the claimant and in favor of the State.

13.1 The burden of proof in establishing the factual and legal basis for refund claims is on the claimant.

13.2 In the case of *Far East bank & Trust Company vs. Commissioner of Internal Revenue* (G.R. No. 149589, September 15, 2006), the Supreme Court held:

> A tax refund is in the nature of a tax exemption which must be construed

strictissimi juris against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.

13.3 Indeed, a claim for refund is in the nature of an exemption and is construed in *strictissimi juris* against the taxpayer (Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., G.R. No. L-68252, May 26, 1995). In the 2008 case of *M.E. Holding Corp. vs. Court of Appeals* (G.R. No. 160193, March 3, 2008) the Supreme Court held that '(w)e reiterate at this juncture that claims for refund/credit, as in the instant case, are in the nature of claims for exemption.'

14. Taxes collected are presumed to be in accordance with laws and regulations.

15. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (**Asiatic Petroleum Co. vs Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670**).

16. Respondent humbly manifests that this Honorable Court is bereft of jurisdiction to hear and try the instant case, due to failure of the petitioner to exhaust all administrative remedies. Respondent submits that the instant petition for review was filed *prematurely*.

17. In view of the foregoing, for lack of merit and want of jurisdiction, this Honorable Court should therefore dismiss the case outright. In so doing, a long and tedious trial would be dispensed with and the Honorable Court as well as the parties would be spared

from undergoing the rigors and expenses of a full-blown trial."

During trial, petitioner presented documentary and testimonial evidence in support of its refund claim. On the other hand, when it was respondent's turn to present her evidence on October 9, 2012, respondent's counsel manifested that she received a Reply from the One Stop Shop that the investigation of petitioner's claim is still ongoing and therefore, she will no longer present evidence for respondent.[5] In view thereof, the parties were granted a period of thirty (30) days to file their respective Memorandum in the Resolution dated October 9, 2012.[6]

On November 21, 2012, this case was submitted for decision[7] after petitioner filed its Memorandum[8] on November 7, 2012 and respondent filed her Memorandum[9] on November 14, 2012.

Hence, this Decision.

THE ISSUES

The sole issue jointly stipulated by the parties for this Court's resolution is: "Whether or not Petitioner is entitled to the refund of the excess input taxes in the total amount of P43,268,934.51 for the 1st quarter of 2009 allegedly representing its unutilized input VAT." [10]

THE COURT'S RULING

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 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

[5] Minutes of the October 9, 2012 Hearing, Docket, p. 147.
[6] Docket, p. 149
[7] Resolution dated November 21, 2012, Docket, p. 207.
[8] Docket, pp. 150-164.
[9] Docket, pp. 171-196.
[10] Statement of the Issue, JSFI, Docket, p. 96.

> 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."

From the foregoing, to be entitled to a refund or issuance of a tax credit certificate of creditable input VAT payments directly attributable to zero-rated or effectively zero-rated sales, these requisites must be satisfied:

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

Before We look at petitioner's compliance with the first four requisites mentioned above, it is imperative that We first consider petitioner's compliance with the fifth requisite requiring that the claim for refund be filed within the two-year prescriptive period..

Respondent argues that the administrative claim has already prescribed due to the lapse of the two (2)-year prescriptive period provided under Section 112(A) and (B) of the NIRC of 1997 while the instant judicial claim for refund was filed prematurely for failure to exhaust administrative remedies, which means that this Court has no jurisdiction over the case and must dismiss the same. As the instant case is a claim for refund of the alleged input VAT paid by petitioner on its purchases of goods and services covering the period of January 1, 2009 to March 31, 2009, allegedly, petitioner should have filed its administrative claim for refund on or before March 31, 2011.

According to respondent, an administrative claim must be a **written claim** for refund filed by the taxpayer with respondent and must be a categorical demand for reimbursement, and that there must be **submission of complete supporting documents**. Respondent claims that there was no written claim for refund because petitioner only submitted a Claimant Information Sheet before the One-Stop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance.

In petitioner's Reply[11], petitioner points out that attached to the Claimant Information Sheet No. 62439 which it filed on March 22, 2011 was the two-page letter dated March 1, 2011, stating:

> "We have the honor to apply for refund of input VAT paid during the first quarter of 2009 through the One-Stop-Shop and Duty Drawback Center pursuant to Administrative Order No. 266.
>
> In this connection, we are submitting herewith our application for Tax Credit corresponding to our input VAT payments for the first quarter of 2009 in the amount of P43,268,934.51. This amount is composed of the following:"

Also attached to the Claimant Information Sheet is BIR Form No. 2552 or the "Application for Tax Credit/Refund of Value-Added Tax Paid" dated March 1, 2011.

Taking into consideration the parties' arguments and counter-arguments, the Court finds that the records of this case contradict the averments of respondent.

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[11] Docket, pp. 73-77.

A perusal of the BIR records show that aside from the Claimant Information Sheet filed by petitioner, also attached thereto are the following:

1. Petitioner's Letter dated March 1, 2011 addressed to One-Stop Shop Tax Credit and Duty Drawback Center of the Department of Finance;[12] and

2. Petitioner's Application for Tax Credit/Refund of Value-added Tax Paid (BIR Form No. 2552).[13]

The above-mentioned documents readily show that petitioner indeed filed an application letter in connection with its administrative claim for refund. Moreover, the fact of filing was admitted under Paragraph 4 of the Joint Stipulation of Facts and Issues that : "4. 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 March 22, 2011, per Application No. 62349 for the amount of P43,268,934.51". This admission was incorporated in the Pre-Trial Order dated May 7, 2012 under the subheading of Admitted Facts.[14]

As regards the non-submission of supporting documents, respondent avers that petitioner failed to submit the complete supporting documents and therefore, the one hundred twenty (120)-day period within which respondent must decide pursuant to Section 112(C) of the NIRC of 1997, as amended by Republic Act (R.A.) No. 9337, has yet to commence.

Again, respondent's contention is bereft of merit.

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*[15], held that it is the taxpayer and not the BIR who determines what relevant supporting documents to submit as basis of its claim, to wit:

"The term 'relevant supporting documents' should be

[12] BIR records, pp. 840-841.
[13] BIR records, p. 837.
[14] Pre-Trial Order, Docket, pp, 117-121, at p. 118.
[15] G.R. Nos. 172045-46, June 16, 2009.

> understood as those documents necessary to support the legal basis in disputing a tax assessment **as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.**" (*Emphasis supplied)*

Based on the records, considering that no written notice was subsequently sent by the BIR informing petitioner that the documents petitioner submitted on March 22, 2011 were incomplete, the presumption is that complete documents had been submitted by petitioner when it filed its administrative claim on March 22, 2011. Thus, the 120-day period within which respondent is required to act on petitioner's refund, started to run from March 22, 2011 or until July 20, 2011. Evidently, no action was taken by respondent on petitioner's administrative claim within the 120 day period.

Due to the inaction of respondent, petitioner had thirty (30) days from July 20, 2011, or until August 19, 2011, within which to seek judicial recourse, as mandated under Section 112 (C) of the NIRC of 1997. Hence, on August 1, 2011, petitioner timely filed its appeal by way of a Petition for Review before this Court as the same was filed well within the 30-day period after the lapse of the 120-day period mentioned above.

Consequently, the instant appeal was not prematurely filed. Likewise, petitioner's administrative claim for refund has not prescribed when the same was filed on March 21, 2011, as this was prior to the prescriptive period which ended on March 31, 2011.

Having settled the timeliness of petitioner's administrative and judicial claims for refund, We look at petitioner's compliance with the first four requisites for a valid refund.

Anent the first requisite regarding the existence of a zero-rated or effectively zero-rated sales, petitioner's Amended VAT Return for the first quarter of 2009 reflected zero-rated export sales in the total amount of P2,506,069,926.20.[16] The Independent CPA noted that

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[16] Line 17, Exhibit "L-1".

this export sale has a US dollar value of 52,490,824.00, broken down as follows:

Provisional billings for direct export sales of copper	US$ 53,765,797.00
Adjustment to previous quarters' provisional billings	(1,274,973.00)
	US$52,490,824.00

Petitioner claims that its shipments and sales of mineral products to Pan Pacific Copper Co. of Tokyo, Japan, a foreign buyer, are zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, to wit:

> "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)."

The above-quoted provision, however, should not be taken in isolation but should be read in conjunction with Section 113 of the same Code, as implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005, which prescribes that a VAT-registered person, like petitioner, shall for every sale, issue an invoice or receipt which must contain the following information:

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

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

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

(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:

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" *(Emphasis supplied)*

Section 4.113-1 of RR No. 16-2005, on the other hand, provides:

"SECTION 4.113-1. *Invoicing Requirements.* —

xxx xxx xxx

(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; xxx"

The invoices or receipts must also be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, thus:

"**SEC. 237.** ***Issuance of Receipts or Sales or Commercial Invoices.*** – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25) 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"

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

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

Pursuant to the afore-quoted provisions, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, such as: (a) the sales invoice as proof of sale of goods; (b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (c) the 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.

In addition to the above requirements, the sales invoices supporting the export sales must be duly registered with the Bureau of Internal Revenue and contain all the required information such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Based on its Long Term Gold and Copper Concentrate Sales Agreement with Pan Pacific Copper., Ltd. of Tokyo, Japan,[17] for the period covering the first quarter of 2009, petitioner actually shipped mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, Japan and generated export sales, as shown in petitioner's Schedule of Export Sales[18] and various export documents.

While the Court noted that the final invoices submitted by petitioner bare dates much later than the dates of shipment indicated in the bills of lading and provisional invoices, petitioner explained that in its direct exports of copper concentrates, it issues two invoices to the buyer. The first is the provisional invoice which it issues upon shipment covering the 90% of the estimated value of the shipment and the second is the final invoice which petitioner issues only after it and its buyer have reached an agreement regarding the final settlement weights, assays and quotations or final value of the shipment, which are determined or done after arrival of the shipment at the port of loading.[19]

In other words, the shipment date indicated in the bill of lading is the date considered as the date of the sale or transaction. It appearing therefore that the bills of lading covering export sales of US$53,765,797.00 were all dated within the first quarter of 2009, the related final invoices which carry dates much later than the dates when the sales or shipments were made, are deemed valid.

[17] Exhibit "B".
[18] Exhibit "E".
[19] Clause 9 of Exhibit "B".

To substantiate its export sales for the first quarter of taxable year 2009, petitioner proffered its provisional invoices[20], final invoices[21], bills of lading[22], and export declarations[23]. Likewise, the foreign currency proceeds derived from said export sales were inwardly remitted and accounted for in accordance with the rules and bank regulations of the *Bangko Sentral ng Pilipinas* as evidenced by the bank certifications[24] and entries in petitioner's passbook in local banks of the payments received.[25]

As to adjustments to correct billings for the previous quarter's shipments in the amount of negative US$1,274,973.00, this Court finds the adjustments proper as shown by export declarations[26], bills of lading[27], provisional invoices[28], and final invoices[29].

Hence, petitioner's export sales for the first quarter of 2009 in the amount of US$52,490,824.00 with the peso value equivalent to P2,506,069,926.20 qualify for VAT zero-rating.

As regards the second, third and fourth requisites, this Court must determine whether petitioner incurred or paid input taxes in connection with its zero-rated export sales and also whether said input taxes were not applied against any output VAT liability of petitioner. This is for the purpose of establishing the following: that input taxes were incurred or paid by petitioner; that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales; and that the input VAT payments were not applied against any output VAT liability.

Petitioner's Amended VAT Return for the first quarter of 2009[30] reflected an input VAT of P43,234,725.22 on importations and input VAT of P34,209.29 on domestic purchases of services totalling P43,268,934.51, as shown below:

[20] Exhibits "E-1-b" to "E-4-b".
[21] Exhibits "E-1-c" to "E-4-c".
[22] Exhibits "E-1-a" to "E-4-a"..
[23] Exhibits "E-1" to "E-4".
[24] Exhibits "F-1" to "F-3".
[25] Exhibit "F-3-a".
[26] Exhibits "E-5" to "E-11".
[27] Exhibits "E-5-a" to "E-11-a".
[28] Exhibits "E-5-b" to "E-11-b".
[29] Exhibits "E-5-c" to "E-11-c".
[30] Exhibit "L-1".

	Purchases	Input Tax
Importations - Goods other than capital goods	P 360,289,376.84	P 43,234,725.22
Domestic Purchase of Services	285,077.42	34,209.29
Total	**P360,574,454.26**	**P43,268,934.51**

However, the total input VAT of P43,234,725.22 on importations includes the amount of P11,478,271.00, as computed below, representing amortization of input taxes on importation of capital goods from the fourth quarter of 2006 to fourth quarter of 2007, which had already been previously filed with this Court for refund or issuance of tax credit certificate, thus constituting a double claim, to wit:

Input taxes paid on importation of capital goods	
Fourth quarter of 2006	P 7,854,823.00
First quarter of 2007	13,522,917.00
Second quarter of 2007	13,329,442.00
Third quarter of 2007	12,541,436.00
Fourth quarter of 2007	10,142,737.00
Total	57,391,355.00
Five-year amortization period in months	60
Monthly amortization	956,522.58
No. of months in a year	12
Total	**P11,478,271.00**

Consequently, petitioner's recomputed input VAT claim on importations for the first quarter of 2009 amounts to P31,756,454.22 (P43,234,725.22 less P11,478,271.00), which may be further broken down as follows:

Supported by original BCORs, BDAs and IEIRDs (Exhibits G-1 to G-41-a)	
Dated in the current first quarter of 2009	P 12,679,459.00
Out-of-period receipts dated fourth quarter of 2008	4,524,108.22
Supported by original BCORs and BDAs only (Exhibits H-1 to H-5)	
Dated in the current first quarter of 2009	172,441.00
Out-of-period receipts dated fourth quarter of 2008	49,956.00
Supported by original IEIRDs only (Exhibits I-1 to I-39)	
Dated in the current first quarter of 2009	11,660,696.00
Out-of-period receipts dated fourth quarter of 2008	127,644.00
No supporting documents	2,542,150.00
Total	**P 31,756,454.22**

As regards the input tax on domestic purchases of services amounting to P34,209.29, the Court-commissioned Independent CPA noted that said amount is not supported by original VAT official receipts in the name of petitioner.

Based on the Independent CPA's findings, petitioner's claim in the amount of P7,278,067.51 must be disallowed outright for the reasons summarized as follows:

	Importation	Domestic	Total
Supported by original BCORs, BDAs and IEIRDs dated 4th quarter of 2008	P 4,524,108.22	-	P 4,524,108.22
Supported by original BCORs and BDAs only dated 4th quarter of 2008	49,956.00	-	49,956.00
Supported by original IEIRDs only dated 4th quarter of 2008	127,644.00	-	127,644.00
No supporting documents	2,542,150.00	P 34,209.29	2,576,359.29
Total	**P7,243,858.22**	**P34,209.29**	**P7,278,067.51**

Moreover, after scrutiny of the documents, such as the Import Entry and Internal Revenue Declarations (IEIRDs)[31] supporting the remaining input taxes of P24,512,596.00 (P31,756,454.22 plus P34,209.29 less P7,278,067.51), this Court finds that the following input taxes were likewise dated outside the period of claim and must be disallowed from petitioner's claim:

IEIRD			
Date	**Exhibit No.**	**Supplier**	**Input VAT**
12/3/2008	I-6	Process Machinery Company Inc.	P 65,600.00
12/9/2008	I-10	Atlas Copco (Southeast Asia) PTE Ltd	28,654.00
11/24/2008	I-11	AIA Engineering Ltd Ahmedabad	1,685,930.00
12/11/2008	I-12	Lincoln Diesels Spares Ltd	53,329.00
12/18/2008	I-13	Atlas Copco Craelius	43,526.00
12/18/2008	I-14	Metso Brasil Indusria E Commercio	58,332.00
12/22/2008	I-15	Atlas Copco (Southeast Asia) PTE Ltd	56,181.00
		TOTAL	**P1,991,552.00**

Therefore, only the remaining claim in the amount of P22,521,044.00 represents petitioner's substantiated input tax which is attributable to its zero-rated sales for the first quarter of 2009, tabulated below:

[31] Exhibits "I-1" to "I-39".

	Input VAT on Importation	Input VAT on Domestic Purchases	Total
Input VAT claimed	P 31,756,454.22	P 34,209.29	P 31,790,663.51
Outright Disallowances	7,243,858.22	34,209.29	7,278,067.51
Total	24,512,596.00	-	24,512,596.00
Less: Additional Disallowances	1,991,552.00		1,991,552.00
Substantiated Input VAT	**P22,521,044.00**	**-**	**P22,521,044.00**

However, a portion of the substantiated input VAT of P22,521,044.00 shall be applied against petitioner's reported output VAT liability of P623,090.59[32]. Consequently, only the remaining input VAT of P21,897,953.41 can be attributed to the entire zero-rated sales declared and substantiated by petitioner, as computed below:

Substantiated Input VAT	P 22,521,044.00
Less: Output VAT	623,090.59
Refundable Input VAT attributable to zero-rated sales	**P21,897,953.41**

As evidenced by its Quarterly VAT Returns from the second quarter of 2009 to the fourth quarter of 2010,[33] petitioner was able to prove that the input VAT of P21,897,953.41 was not applied against any output VAT in the succeeding quarters. While petitioner carried over the claimed unutilized input VAT for the first quarter of 2009 to the succeeding quarters until the fourth quarter of 2010, the same was deducted as "VAT Refund/TCC claimed" from the total available input tax of P323,729,819.39[34] in the fourth quarter of 2010.

To recapitulate, the Court finds that petitioner has sufficiently proven 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 first quarter of 2009, but in the reduced amount of P21,897,953.41.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of petitioner the reduced amount of

[32] Line 15B, Exhibit "L-1".
[33] Exhibits "L-2" to "L-8".
[34] Line 22 of Exhibit "L-8".

P21,897,953.41, representing excess and unutilized input taxes for the first quarter of 2009.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice