REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILEX MINING CORPORATION, Petitioner,	C.T.A. CASE NOS. 8676 and 8687
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 12 2015 4:25 p.m.

x- -x

DECISION

FABON-VICTORINO, J.:

On different dates, petitioner Philex Mining Corporation filed two (2) Petitions for Review for the refund or issuance of tax credit certificate (TCC) of its alleged unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to its zero-rated sales for the first (1^{st}) and second (2^{nd}) quarters of 2011, broken down as follows:

CTA Case No.	Period Covered (2011)	Amount involved
8676	First Quarter	₱39,541,253.78
8687	Second Quarter	₱23,569,534.98

Petitioner is a domestic corporation with principal office address at 27 Brixton Street, Pasig City. It is engaged in mining business, including exploration and operation of mine properties and the commercial production and marketing of mine products.

Respondent, on the other hand, is Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to act on claims for refund or issuance of TCC in accordance with law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner avers that on March 11, 2004, it executed a "Long Term Gold and Copper Concentrates Sales Agreement" with Pan Pacific Copper Co., Ltd. of Tokyo, Japan (Pan Pacific), for the sale of its copper concentrates starting April 1, 2004[1]. On August 16, 2007, it entered into a similar contract with Louis Dreyfus Metals of Switzerland for the sale of its copper concentrates[2].

On April 25, 2011, petitioner allegedly filed its original VAT Return for the 1st quarter of 2011. Subsequently, or on February 14, 2012, it filed an amended VAT Return[3], reflecting zero-rated sales in the amount of ₱2,462,434,322.14, and VATable sales/receipts in the amount of ₱107,142.92.

On July 25, 2011, petitioner allegedly filed its original VAT Return for the 2nd quarter of 2011 which it amended on August 2, 2012[4], reflecting zero-rated sales in the amount of ₱4,617,138,651.34 and VATable sales/receipts in the amount of ₱16,163,651.34.

Petitioner further posits that for the 1st and 2nd quarters of 2011, it imported goods other than capital goods in the total amount of ₱369,487,604.58 and ₱191,859,633.34, respectively, and purchased domestic services in the respective amount of ₱53,575,498.17 and ₱20,716,809.50, all to be used in its mining operations, production and sale of its mine products.

Petitioner paid input taxes on such importations of goods other than capital goods and domestic purchases of services in the amounts of ₱44,338,512.55 and ₱6,429,059.78, respectively, or the total amount of

[1] Exhibit "P-4".
[2] Exhibit "P-17".
[3] Exhibit "P-15-a".
[4] Exhibit "P-15-b".

₱50,767,572.33 for the 1st quarter[5] and the amount of ₱23,023,156.00 for the importation of goods other than capital goods and the amount of ₱2,486,017.14 for domestic purchase of services or the total amount of ₱25,509,173.14[6] for the 2nd quarter of 2011.

On March 27, 2013, petitioner filed its claims for refund/tax credit for the 1st and 2nd quarters of 2011[7] with the One-Stop Shop Center of the Department of Finance (DOF-OSS) in the respective amounts of ₱50,767,572.33 and ₱25,509,173.14. However, the amount of ₱50,767,572.33 was decreased to ₱39,541,253.78 since it already claimed refund for the amount of ₱11,226,318.58; while the amount of ₱25,509,173.14 was decreased to ₱23,569,534.98 as the difference had been applied against its output tax liability for the 2nd quarter of 2011.

Respondent failed to act on the foregoing applications for refund/tax credit. Consequently, petitioner filed two (2) separate Petitions for Review on July 26, 2013[8] and on August 8, 2013[9] for the refund/tax credit of its alleged unutilized input VAT paid on purchases of goods and services attributable to zero-rated sales for 1st and 2nd quarters of 2011.

On October 8, 2013[10] and October 14, 2013[11], respondent filed her respective Answers to the two (2) Petitions for Review. She basically argued that petitioner's claim was subject to routinary examination; that taxes paid and collected were presumed to have been paid in accordance with law and regulations, hence, not refundable; that petitioner failed to comply with the requirements provided by the NIRC of 1997, as amended, as well as its implementing rules and regulations; and petitioner needed to prove the merit of its claim for refund/tax credit.[12] She further stressed that tax refunds are in the nature of tax

---

[5] Exhibit "P-15-a".
[6] Exhibit "P-15-b".
[7] Exhibits "P-2" and "P-3".
[8] CTA Case No. 8676, docket, pp. 1-4.
[9] CTA Case No. 8687, docket, pp. 6-9.
[10] CTA Case No. 8687, docket, pp. 21-25.
[11] CTA Case No. 8676, docket, pp. 30-34.
[12] *Commissioner of Internal Revenue vs. Seagate Technology*, G.R. No. 153866, February 11, 2005.

exemptions and are to be construed *strictissimi juris* against the entity claiming the same[13] but strictly construed in favor of the State.

In the Resolution dated November 22, 2013[14], the two (2) Petitions for Review docketed as CTA Case No. 8676 and CTA Case No. 8687 were consolidated.

On May 26, 2014[15], a Pre-Trial Order was issued based on the parties' Joint Stipulation of Facts and Issues filed on May 7, 2014[16].

During the trial, petitioner presented Eileen C. Rodriguez and Mr. Albert G. Alba.

By way of Judicial Affidavit[17], **Eileen C. Rodriguez** testified that as petitioner's Accounting Manager she supervised the preparation and filing of petitioner's VAT Returns for the 1st and 2nd quarters of 2011 and the filing of its claims for refund of excess input VAT for the same quarters with the One Stop Shop Center of the DOF on March 27, 2013 as indicated in the Claim Information Sheet No. 65485[18] for the 1st quarter of 2011 and Claim Information Sheet No. 65484[19] for the 2nd quarter of 2011, together with the supporting documents[20].

Petitioner is engaged in the mining industry with copper concentrates and gold bullions as its main products. During the 1st and 2nd quarters of 2011, petitioner sold copper concentrates to Pan Pacific Copper Co. Ltd.[21], a Japanese company based in Tokyo, Japan, and to Louis Dreyfus Commodities Metals (LD Metals), a Swiss company, which also acted as a broker for other foreign buyers.

---

[13] *Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 154028, July 27, 2005.
[14] CTA Case No. 8687, docket, p. 46.
[15] CTA Case No. 8676, docket, pp. 205-211.
[16] CTA Case No. 8676, docket, pp. 197-202.
[17] Exhibits "P-1" and "P-1-a".
[18] Exhibits "P-2" and "P-2-a".
[19] Exhibits "P-3" and P-3-a".
[20] Exhibits "P-2-b", "P-2-c" and "P-3-b".
[21] Long term Gold and Copper Concentrates Sales Agreement dated March 11, 2004, Exhibit "P-4".

On March 27, 2013, she filed with the DOF One Stop Shop petitioner's claims for refund/tax credit for the 1st and 2nd quarters of 2011, together with the supporting documents. The transmittal letters for the supporting documents attached to the claims for refund were signed by petitioner's Senior Vice-President Renato Miguel.

On the other hand, the Long Term Gold and Copper Concentrates Sales Agreements were signed by petitioner's then Chairperson, Walter Brown in the presence of petitioner's top officers.

Independent Certified Public Accountant (ICPA) **Albert G. Alba**, declared in his Judicial Affidavit[22] that his examination, audit and evaluation of petitioner's documents pertinent to its claim for refund of excess input taxes for the 1st and 2nd quarters of 2011 revealed that out of the total input taxes claimed for the 1st and 2nd quarters of 2011 in the amounts of ₱50,767,572.33 and ₱25,509,173.14, respectively, the amounts of ₱12,857.15 and ₱1,939,638.16 were used to pay petitioner's tax liabilities for the same quarters. Hence, petitioner's unutilized input VAT amounts only to ₱50,754,715.18 and ₱23,569,534.98 for the 1st and 2nd quarters of 2011, respectively.

On July 11, 2014, petitioner rested after filing its Formal Offer of Evidence[23], per Resolution dated August 14, 2014[24].

Respondent presented her sole witness, Revenue Officer (RO) **Jovelyn L. Borromeo** who declared in her Judicial Affidavit[25] that as part of the VAT Credit Audit Division of the BIR, she handled the examination of petitioner's claim for VAT refund for the 1st and 2nd quarters of 2011. The audit is still on-going as they are still waiting for the additional documents indicated in the First Notice dated March 13, 2013[26] sent to petitioner.

[22] Exhibits "P-5" and "P-5-a".
[23] CTA Case No. 8676, docket, pp. 214-a to 211-e.
[24] *Ibid.*, pp. 938-939.
[25] Exhibits "R-2" and "R-2-a".
[26] Exhibit "R-1".

After the parties filed their respective memoranda on September 18, 2014[27] and November 10, 2014[28], the case was submitted for decision on November 12, 2014[29].

STATEMENT OF ISSUE

The lone issue for the resolution of the Court is whether petitioner is entitled to refund/tax credit of its alleged excess and unutilized input taxes in the total amounts of ₱39,541,253.78 and ₱23,569,534.98 for the 1st and 2nd quarters of 2011, respectively, being an exporter of mineral products. [30]

RULING OF THE COURT

Petitioner is claiming for the refund/tax credit of its alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 1st and 2nd quarters of 2011, broken down as follows:

CTA Case No.	Period Covered (2011)	Amount involved
8676	First Quarter	₱39,541,253.78
8687	Second Quarter	₱23,569,534.98

To be entitled to the relief sought, the following requisites must be satisfied, to wit:

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in zero-rated or effectively zero-rated sales;
3. the claim must be filed within two years after the close of the taxable quarter when the relevant sales were made; and
4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such

---

[27] Memorandum for Petitioner, CTA Case No. 8676, docket, vol. 5, pp. 954-973.
[28] Respondent's Memorandum, *ibid.*, pp. 987-996.
[29] CTA Case No. 8676, docket, p. 998.
[30] Statement of the Issues, Stipulation of Facts and Issues, CTA Case No. 8676, docket, p. 198; Pre-Trial Order, CTA Case No. 8676, docket, p. 206.

> input tax has not been applied against the output tax zero-rated or effectively zero-rated sales;

Foremost of the above-cited requisites is the timeliness of the filing of the claim.

Under Section 112 (A) and (C) of the NIRC of 1997, as amended, a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for refund/tax credit of creditable input tax due or paid attributable to such sales within two (2) years from the close of the taxable quarter when the relevant sales were made. From the filing of the application for such claim for refund/tax credit, respondent has one hundred twenty (120) days to act on the claim pursuant to Section 112(C) of the same Tax Code. In case of adverse decision or expiration of the period granted upon respondent to act, petitioner has thirty (30) days from notice or lapse of the one hundred twenty (120)-day period to appeal the adverse decision or inaction of respondent to this Court.[31]

---

[31] Section 112 (A) and (C) of the NIRC of 1997, as amended, read:

> "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.
>
> (B) 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

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue*[32], the Supreme Court clarified the application of prescriptive periods under Section 112 (A) and (C), in the following fashion:

> "This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period."

The present claims covers the 1st and 2nd quarters of 2011 which closed on March 31, 2011 and June 30, 2011. Counting two years from the said dates, petitioner had until March 31, 2013 and June 30, 2013, respectively, within which to file its administrative claims for refund/tax credit.

Record shows that petitioner filed its claims for refund/tax credit for the 1st and 2nd quarters of 2011, together with the supporting documents with the DOF-OSS on March 27, 2013.[33] Evidently, petitioner's administrative claims for refund/tax credit were filed within the two-year prescriptive period.

---

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."

[32] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

[33] Exhibits "P-2", "P-2-b", "P-3", and "P-3-b.

From March 27, 2013, respondent had one hundred twenty (120) days to grant or deny petitioner's claims. Since the 120-day period lapsed on July 25, 2013 without any action on the part of respondent, petitioner had 30 days from such date or until August 26, 2013 to file its judicial claim before this Court.

As earlier stated, petitioner separately filed its Petitions for Review for the 1st and 2nd quarters of 2011 on July 26, 2013 and August 8, 2013, respectively. Hence, petitioner's judicial claims were timely filed as well.

On the first of the enumerated requisites - the law requires the taxpayer-claimant to prove that it is a VAT-registered taxpayer. Petitioner claims that it being a VAT-registered entity has always been admitted. However, the record is silent on the matter. In fact, petitioner did not at all offer in evidence its Certificate of Registration as a VAT-registered entity.

While it may be true that petitioner attached to its Petition for Review copies of its Registration Certificate and Certificate of Registration as Annexes A and A-1, the same cannot be given weight or evidentiary value given that the said documents were not introduced and formally offered as evidence for the appreciation of the Court.

Under the circumstances, the Court cannot be oblivious of Section 34 of Rule 132 of the Rules of Court mandating the Court not to consider any piece of evidence which has not been formally offered and the purpose for which the evidence is offered was not specified.

A formal offer is necessary since judges are required to base their findings of fact and judgment only— and strictly— upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. Besides, the opposing party will be deprived of his chance to examine the document and object to its admissibility.[34] Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight.[35]

As consistently held by the Court, tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption.[36] The burden in claiming tax refund rests upon the taxpayer. Further, in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.[37]

In fine, the Court finds that petitioner failed to establish that it is a VAT-registered entity. Absent the first requisite, discussion on the other requirements is unnecessary.

WHEREFORE, the consolidated Petitions for Review filed by Philex Mining Corporation on July 26, 2013 and August 8, 2013, are hereby **DENIED**, for insufficiency of evidence.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[34] *Emerito C. Barut vs. People of the Philippines*, G.R. No. 167454, September 24, 2014.
[35] *Heirs of the Deceased Carmen Cruz-Zamora vs. Multiwood International, Inc.*, G.R. No. 146428, January 19, 2009.
[36] *Far East Bank and Trust Company as Trustee of Various Retirement Present Funds vs. Commissioner of Internal Revenue and the Court of Tax Appeals*, G.R. No. 138919, May 2, 2006, citing *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, 368 Phil. 388, 411 (1999).
[37] *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

We Concur:

LOVELL R. BAUTISTA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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 Division.

ROMAN G. DEL ROSARIO
Presiding Justice