Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1371** (CTA Case No. 8600)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
	Promulgated:
PHILEX MINING CORPORATION, Respondent.	APR 1 1 2017 2:38 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1] is filed by the Commissioner of Internal Revenue on November 12, 2015 pursuant to Section 2 (a)(1)[2] Rule 4 of Administrative Matters No. 05-11-07-CTA, otherwise known as the "Revised Rules of the Court of Tax Appeals". It assails the Decision[3]

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[1] CTA *En Banc* Rollo, pp. 6-18
[2] "**SEC. 2.** Cases within the jurisdiction of the Court en banc. – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;"

[3] Division Docket, pp. 570-587

dated May 14, 2015 and Resolution[4] dated October 8, 2015, rendered by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8600, which partially granted Philex Mining's claim for refund in the reduced amount of ₱18,974,066.49 representing its excess unutilized input taxes for the 4th quarter of 2010.

Petitioner Commissioner of Internal Revenue (CIR) is the one charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code. He holds office at the 4th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Philex Mining Corporation is a domestic corporation organized under Philippines laws with principal office address at 27 Brixton St., Pasig City. It is engaged in the mining business, which includes the exploration, development and operation of mining properties for commercial production and marketing of mine products, consisting of gold bullion and copper ore concentrates.

Respondent is a value-added tax (VAT) registered taxpayer with VAT Registration Certificate No. 35-6-000731 dated October 29, 1997. It also had its Application for Zero-Rate approved on April 12, 1998, pursuant to Sec. 4.113-3[5] of Revenue Regulations (RR) No. 7-95[6].

On January 24, 2011, respondent filed with the BIR its VAT Return for the 4th quarter of 2010.

On November 7, 2012, respondent filed an Amended VAT Return which reflected total zero-rated sales of ₱5,191,480,758.61, importation of goods of ₱133,995,016.68 with input tax of ₱16,079,402.00, and

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[4] *Ibid.*, pp. 607-613
[5] **SECTION 4.100-3.** *Effectively Zero-rated Sale of Goods and Properties.* — Effectively zero-rated sales of goods and properties shall refer to the sale by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws, e.g., RA 7227 or international agreements, *e.g.*, ADB, IRRI. Under these Regulations, effectively zero-rated transactions shall cover local sale of goods and properties to persons or entities who enjoy exemptions from indirect taxes under par. (a) no. (3), pars. (b) and (c) of the preceding section.
[6] CONSOLIDATED VALUE-ADDED TAX REGULATIONS, dated December 9, 1995

purchases of services of ₱201,018,864.17 with input tax of ₱24,122,263.70

On August 28, 2012, respondent filed with the One Stop Shop Center of the Department of Finance (DOF-OSS) an administrative claim for refund in the total amount of ₱40,201,665.70, representing its unitized input VAT for the 4th quarter of 2010.

Claiming inaction thereof, respondent elevated the matter *via* filing a Petition for Review on January 9, 2013 with the Court of Tax Appeals (CTA).

Thereafter, trial ensued.

On May 14, 2015, the court *a quo* promulgated the Decision being assailed in this wise:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent *[now the petitioner]* is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner *[now the respondent]* in the reduced amount of Php18,974,066.49 representing unutilized input VAT from zero-rated transactions for the 4th quarter of 2010.
>
> **SO ORDERED.**"

On June 18, 2015, the petitioner filed a Motion for Reconsideration (Decision of 14 May 2015)[7] praying that respondent's Petition for Review be dismissed for being premature and for failure to comply with the accounting requirements as mandated by RR NO. 16-2005[8] and Sections 113 (C) and 114 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

On October 8, 2015, the court *a quo* promulgated the assailed Resolution, denying the petitioner's Motion for Reconsideration for lack of merit.

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[7] Division Docket, pp. 588-595
[8] CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005, dated September 1, 2005

After asking for an extension of time, petitioner appealed the matter to the Court *En Banc* on November 12, 2015 *via* the instant Petition for Review[9]. He prays that the Decision and Resolution dated May 14, 2015 and October 8, 2015, respectively, be reversed and set aside and that the claim for refund be denied in its entirety.

On December 22, 2015, the Court *En Banc* issued a Resolution[10] directing respondent to file its comment within ten (10) days from receipt thereof. In compliance, respondent filed its Comment[11] on February 1, 2016.

Consequently, in a Resolution[12] dated February 16, 2016, the Court *En Banc* gave due course to the instant Petition and granted the parties a period of thirty (30) days within which to file their respective memorandum.

On March 3, 2016, respondent filed a Manifestation (Re: Resolution dated February 16, 2016)[13] stating that it is adopting the arguments it has already advanced in its Comment filed on February 1, 2016. Accordingly, the Court *En Banc* noted the same in a Minute Resolution[14] dated March 8, 2016. While petitioner, on the other hand, filed his Memorandum[15] on April 22, 2016.

In view of the foregoing, the Court *En Banc* deemed the present case submitted for decision in a Resolution[16] dated May 17, 2016.

Petitioner raised the following issues[17] as grounds for his Petition, *to wit*:

> Respondent's failure to present the complete relevant documents at the time it filed its administrative claim for refund with the DOF-OSS is fatal to its application for refund.

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[9] *Supra* No. 1
[10] CTA *En Banc* Rollo, pp. 50-51
[11] *Ibid.*, 52-58
[12] *Id.*, pp. 60-61
[13] *Id.*, pp. 62-63
[14] *Id.*, p. 64
[15] *Id.*, pp. 71-86
[16] *Id.*, pp. 88-89
[17] IV. Grounds for the Petition for Review, Petition for Review, CTA *En Banc* Rollo, pp. 7-8

Respondent failed to properly substantiate its claim for refund on the ground of its non-compliance with the law and RR No. 16-2005.

Petitioner argues that, when respondent filed its claim for refund with the DOF-OSS, it merely presented the Claimant Information Sheet and was not accompanied with the complete set of documents prescribed in the checklist to substantiate its claim. Thus, having failed to comply with the requirements of Section 112 of the NIRC of 1997, as amended, in relation to RR No. 16-2005, makes respondent's administrative claim pro forma and should not therefore be considered as having been filed at all. More so, petitioner reiterates that being a claim for refund, the requisites for entitlement should be proven with certainty. As such, RR No. 16-2005 requires, among others, that a subsidiary record in ledger form shall be maintained for the acquisition, purchase or importation of depreciable assets or capital goods which shall contain information on the total input tax thereon as well as the monthly input tax claimed in VAT declaration or return. In respondent's case, it failed to submit the subsidiary sales journal and subsidiary purchase journal. Hence, it was not proven with certainty that the accounting requirements mandated in RR No. 16-2005 and Section 113 (C) of the NIRC of 1997, as amended, were strictly complied with.

After due consideration, *We* find no merit in the instant Petition.

Noticeably, the issues and arguments raised by petitioner in his Petition had already been analyzed, weighed and passed upon extensively in the assailed Decision and Resolution. Petitioner did not raise anything new herein to merit any modification or reversal thereof. Nonetheless, at the risk of being repetitive *We* shall again address petitioner's concerns.

In the case of *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue, and Commissioner of Internal Revenue vs. Team Sual Corporation (formerly: Mirant Sual Corporation)*[18], *We* have held that the term "complete documents" under Section 112(C)[19] of the NIRC of 1997, as amended, should be

[18] CTA EB Nos. 649 & 651 (CTA Case Nos 6630 & 6733), March 21, 2012
[19] "*(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.

understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The pertinent portion of the case on the matter reads as follows:

> "The contention of the Commissioner that the law requires the submission of complete documents in support of the application filed with the BIR before the 120-day period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law, deserves scant consideration. This issue boils down to the proper interpretation of the term 'complete documents' under Section 112 (D) of the NIRC of 1997 *[now 112(C)]*.
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> In the case of Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc., the Supreme Court ruled:
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> > 'The term 'relevant supporting documents' should be 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.
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> Although the foregoing ruling refers to the interpretation of the term 'relevant supporting documents' under Section 228 of the NIRC of 1997 pertaining to 'Protesting of Assessment', We find no reason why the same doctrine cannot be applied in the interpretation of 'complete documents' referred to under Section 112(D) *[now 112(C)]* of the same Code, for the following reasons:
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> 1. If the determination of the completeness of the documents depends on the BIR, the concerned taxpayer will also be at the mercy thereof; and

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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."

2. It has been held that the Commissioner ought to know the tax records of all taxpayers, and thus, the Commissioner can easily decide whether or not to grant the concerned taxpayer's administrative claim for refund or tax credit certificate. In this connection, nothing in RMO No. 53-98 mandates that the list of documents therein stated, insofar as the VAT is concerned, should be submitted in connection with an application for refund or tax credit certificate under the said Section 112, upon the filing thereof. Furthermore, said RMO is explicit, in its subject and objective, that it provides a checklist of documents to be submitted 'upon Audit', and that it was issued to '(i)dentify the documents to be required from a taxpayer during audit', respectively. In this case, it was not shown that the audit was ever conducted by the BIR in connection with Team Sual's application for refund or tax credit certificate. This is manifested by the lack of BIR Records transmitted to this Court, and by the absence of any 'report of investigation' concerning Team Sual's administrative claim for refund or tax credit certificate. But even if We are to assume that an audit was made, it was never established that the Commissioner ever required Team Sual to submit the documents stated in the said RMO.

Accordingly, **the term 'complete documents' under Section 112(D) of the NIRC of 1997 should be understood as those documents necessary to support the application for refund or tax credit certificate as determined by the taxpayer. Thus, should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not, to submit any document at all, in support of its application for refund or tax credit certificate under Section 112 of the NIRC of 1997, it is reasonable and logical to conclude that the reckoning date of the 120-day period thereunder, should be reckoned from the filing of the said application.**" *(Citations omitted and emphasis Ours)*

Accordingly, the same conclusion was reaffirmed in the consolidated cases of *Commissioner of Internal Revenue vs. Mindanao I Geothermal Partnership*[20], where *We* further held that:

[20] CTA EB Case Nos. 953 and 959, May 12, 2014 (CTA Case No. 7801), *citing* CIR vs. Mindanao II Geothermal Partnership, CTA EB Case Nos. 690 and 718, April 4, 2012 (formerly CTA Case Nos. 7595, 7638 & 7692)

> "The alleged non-submission of complete documents at the administrative level will not bar this Court from receiving, evaluating and appreciating evidence. 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. Moreover, CTA being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA. Otherwise stated, 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." *(Citations omitted)*

Therefore, to reiterate, the BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that petitioner ought to know the tax records of all taxpayers.[21]

That having been settled, *We* will now discuss petitioner's assertion that respondent failed to strictly comply with the provisions of Sec. 4.113-3 of RR No. 16-2005 in relation Section 113 (C) of the NIRC of 1997, as amended. The pertinent provisions are quoted as follows:

> "**SEC. 4.113-3.** ***Accounting Requirements*** — Notwithstanding the provisions of Sec. 233, all persons subject to VAT under Sec. 106 and 108 of the Tax Code shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which every sale or purchase on any given day is recorded. The subsidiary journal shall contain such information as may be required by the Commissioner of Internal Revenue.

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[21] Diageo Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 7846 and 7865, January 16, 2012

A subsidiary record in ledger form shall be maintained for the acquisition, purchase or importation of depreciable assets or capital goods which shall contain, among others, information on the total input tax thereon as well as the monthly input tax claimed in VAT declaration or return."

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

x x x

(C) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance."

In the present case, petitioner assails respondent's non-compliance with the accounting requirements of maintaining a subsidiary sales journal and subsidiary purchase journal. He argues that RR No. 16-2005 strictly requires a taxpayer to maintain a subsidiary record in ledger form for acquisition, purchase or importation of depreciable assets or capital goods which shall contain, among others, information on the total input tax thereon as well as the monthly input tax claimed in VAT declaration or return.

Unfortunately, *We* are not swayed.

Perusal of Sec. 4.113-3 of RR No. 16-2005 and Section 113 (C) of the NIRC of 1997, as amended, reveal that both Sections contain the phrase "Notwithstanding the provisions of Section 233". Thus, the foregoing provisions should be read in conformity with Section 233 of the NIRC of 1997, as amended, which reads as follows:

"**SEC. 233. Subsidiary Books.** — All corporations, companies, partnerships or persons keeping the books of accounts mentioned in the preceding Section **may, at their option, keep subsidiary books as the needs of their**

> **business may require**: Provided, That were such subsidiaries are kept, they shall form part of the accounting system of the taxpayer and shall be subject to the same rules and regulations as to their keeping, translation, production and inspection as are applicable to the journal and the ledger." *(Emphasis Ours)*

Apparently, maintaining subsidiary journals are not mandatory but rather an optional requirement. Henceforth, respondent's failure to maintain a subsidiary sales journal and subsidiary purchase journal is not a condition *sine qua non* in claiming unutilized zero-rated input VAT.

Furthermore, in the case of *Commissioner of Internal Revenue vs. Philex Mining Corporation*[22], *We* had the opportunity to rule on the matter, *viz*:

> "Proceeding from the above-discussion, petitioner asserts that respondent failed to comply with the requirements of Sections 4.113-1 and 4.113-3 of Revenue Regulations (RR) No. 16-2005, in relation to Revenue Memorandum Circular (RMC) No. 62-2005 regarding invoicing and accounting requirements, *i.e.*, maintenance of subsidiary sales journal and subsidiary purchase journal. Likewise, petitioner avers that respondent failed to prove with certainty that it complied with the requirements of Section 114 (A) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended) and Section 4.114-1 of RR No. 16-2005 regarding the filing and payment of the monthly VAT declarations of large and non-large taxpayers.
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> *x x x*
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> Under the afore-quoted provisions of the law, all persons subject to VAT are required to maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. Moreover, VAT-registered persons shall likewise pay VAT on a monthly basis.
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> While it is conceded that the mandatory requirements set forth under Section 113 (C) and Section 114 (A) of the NIRC of 1997, as amended, should be complied with, it is equally important to consider the doctrine laid down under the First

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[22] CTA EB No. 1168 (CTA Case No. 8371), June 19, 2015

Express Pawnshop Company, Inc. case that it is the taxpayer who has the leeway to determine what type of relevant supporting documents it shall present for the successful prosecution of its claim.

As aptly found by the Court in Division, respondent was able to prove by its relevant supporting documents that it is entitled to its claim for refund. **Whether respondent maintains a subsidiary sales journal and subsidiary purchase journal does not affect respondent's claim for refund, because it is not one of the requisites for respondent to be entitled thereto. Nonetheless, non-compliance with the foregoing may be the subject of a separate and independent cause of action by petitioner.**

Similarly, respondent was able to prove before the Court in Division that it paid its VAT liabilities. **Failure to timely pay VAT on a monthly basis may give rise to the payment of penalties under the NIRC of 1997, as amended, but it does not affect respondent's entitlement to its claim for refund because it has sufficiently shown that it has in fact been paid.**" *(Citations omitted and emphasis Ours)*

Hence, in view of the foregoing, *We* find no cogent reason to disturb the assailed Decision and Resolution rendered by the court in division.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated May 14, 2015 and Resolution dated October 8, 2015, rendered respectively, in CTA Case No. 8600, are both **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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