REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILEX MINING CORPORATION, Petitioner,	C.T.A. CASE NOS. 8753 and 8762
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 27 2016 3:33 p.m.

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RESOLUTION

FABON-VICTORINO, J.:

This resolves the Motion for Partial Reconsideration filed by respondent Commissioner of Internal Revenue (CIR) on March 8, 2016 on which petitioner Philex Mining Corporation filed its Comment/Opposition on March 30, 2016. The dispositive part of the assailed Decision promulgated on February 17, 2016 reads as follows:

> **WHEREFORE**, the consolidated Petitions for Review filed by Philex Mining Corporation on January 6, 2014 and January 30, 2014 are **PARTIALLY GRANTED**.
>
> Accordingly, respondent Commissioner of Internal Revenue is **DIRECTED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱34,174,775.19, representing petitioner's unutilized excess

input VAT for the 3rd and 4th quarters of 2011 attributable to its zero-rated sales.

SO ORDERED.

Respondent basically claims that the Court erred when it partially granted petitioner's claim for refund/tax credit of its alleged unutilized input VAT on purchase of goods and services attributable to zero-rated sales as it failed to present sufficient documentary evidence to fully substantiate such claim.

In arguing her position, respondent merely quoted Section 112 paragraphs (A) and (C) of the National Internal Revenue Code, (NIRC), as amended, which provides the prescriptive period within which any VAT registered person may file an administrative claim for refund with respondent's office and the period within which to seek judicial intervention, without discussing its relevance or connection to her plea for reconsideration.

Respondent further avers that petitioner failed to establish that it has refundable or creditable input VAT which has not been applied against its output liabilities justifying a partial grant of the petition.

Petitioner likewise offered no proof that its sales qualify for VAT zero-rating under the existing laws and that its alleged sales were actually made and resulted in refundable or creditable input VAT. For this purpose, petitioner was required to adduce purchase invoices or official receipts which must be compliant with Revenue Memorandum Circular (RMC) No. 42-2003.

Respondent also states that she attached a copy of the Checklist of Requirements for submission of required documents that would enable the assigned Revenue Officers to properly determine the merit of its alleged entitlement to refund/tax credit.

Finally, respondent invokes the tenet that tax refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.

In rejecting the motion for reconsideration, petitioner admits that there are portions of its claim for refund/tax credit which it failed to fully substantiate, precisely the grant for refund/tax credit is only partial or only to the extent of ₱34,174,775.19. Petitioner especially mentions the Court's observation that its Quarterly VAT Returns for the 3rd and 4th quarters of 2011 reflect its input VAT on importations of goods and domestic purchases of services. Admittedly, there is a portion disallowed due to certain specified reasons negating respondent's contention that it failed to establish its refundable input VAT.

Anent respondent's allegation that it failed to establish that its sales qualified for VAT zero-rating, again petitioner cites the Court's finding that its export sales for the 3rd and 4th quarters of 2011 are zero-rated, albeit only partially, based on the evidence presented that it is a VAT-registered entity, with sales and actual shipments of goods from the Philippines to a foreign country which were paid in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations.

Lastly, it is not true that it failed to comply with the invoicing requirement due to the absence of or failure to print the words "zero-rated" in its sales invoices. Both the provisional and final invoices it presented in Court show that the phrase "ZERO RATED SALES" is printed under its name and business address, at the top end of said invoices.

Respondent's Motion for Partial Reconsideration should be denied.

Respondent's discussion of the grounds raised in her bid for reconsideration of the assailed Decision of February 17, 2016 is very hazy and without any specifics giving rise to a conclusion that it was ill or haphazardly prepared. In any event, by stretching the Court's imagination and leniency, it would appear that respondent is asking the Court to revisit the evidence presented which according to her are not sufficient to justify even a partial grant of the claim for refund/tax credit.

But still, after a second hard look of the record of the case including all the evidence presented, the Court is convinced that petitioner was able to substantiate its claim for refund/tax credit but only to the extent of the amount of ₱34,174,775.19, representing its unutilized excess input VAT for the 3rd and 4th quarters of 2011 attributable to its zero-rated sales. Contrary to respondent's contention and as amply discussed in the assailed Decision of February 17, 2016, petitioner was able to provide the Court with sufficient proof for a partial grant of its claim for refund/tax credit. Indeed and as admitted by petitioner, there is a portion in its claim that was not fully substantiated, precisely, it was disallowed by the Court.

The ruling in the consolidated cases of Team Sual Corporation (formerly: Mirant Sual Corporation) v. Commissioner of Internal Revenue, and Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)[1] is also worth to note. In the said consolidated cases, the Court *En Banc* held that the completeness of documents to support an administrative claim for refund is determined by the taxpayer and not by the BIR whose duty under Section 112 (C) of the NIRC of 1997 is to act on the claim within the allowable period of 120-day period from the date of submission of complete documents.

Verily, respondent failed to give the Court reason or rhyme to change or even modify its ruling.

WHEREFORE, for lack of merit, respondent's Motion for Partial Reconsideration filed on March 8, 2016 is hereby **DENIED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[1] CTA EB Nos. 649 and 651, March 21, 2012.

We Concur:

LOVELL R. BAUTISTA	MA. BELEN M. RINGPIS-LIBAN
Associate Justice	Associate Justice