REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8284

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 03 2012
7:25 p.m.

x - x

AMENDED DECISION

CASANOVA, *J.*:

Before Us is petitioner's MOTION FOR PARTIAL RECONSIDERATION[1], filed on August 31, 2012, with respondents COMMENT (Petitioner's Motion for Partial Reconsideration)[2], filed on September 12, 2012.

Petitioner seeks reconsideration of this Court's Decision (the "Assailed Decision")[3], promulgated on July 30, 2012, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of P274,280.51 representing its unutilized input VAT for the 4th quarter of 2008.
>
> **SO ORDERED.**"

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[1] Division Docket, pp. 121-128
[2] Ibid, pp. 129-131
[3] Ibid, pp. 100-119

The grounds relied upon by petitioner in seeking reconsideration of the Assailed Decision are as follows:

> 1. This Honorable Court erred in deducting and disallowing from the claim the total amount of P865,020.72 for the simple reason that the same is supported by out-of-period receipts.
>
> 2. This Honorable Court erred in ruling that "out of the P1,561,197.00 incurred by petitioner on capital goods, only the amount of P169,169.32 is creditable or refundable as of December 31, 2008".

In the Assailed Decision, this Court partially granted petitioner's claim for refund or issuance of tax credit certificate in the reduced amount of P274,280.51 representing its unutilized input VAT for the 4th quarter of 2008. In arriving at the said amount, this Court disallowed the amount of P865,020.72 from the claim as the supporting documents submitted were dated outside the period of claim, i.e. dated 3rd quarter of 2008.

Petitioner, however, contends that this Court's ruling disallowing the amount of P865,020.72 on the ground that the input VAT is supported by out-of-period receipts, is without legal basis. That, there is nothing in Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 that requires that the input taxes attributable to the sales were paid in the same taxable quarter that the sales were made; and, that all that is required under Section 112(A) is that the administrative claim is made within two (2) years after the close of the taxable quarter when the sales were made.

Petitioner's contention is bereft of merit.

The applicable provision in claims for refund or tax credit of input tax is Section 112(A) which reads as follows:

> "**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 of 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. x x x."

Equally applicable are the provisions of Section 110 which allow the input VAT to be credited from output VAT, and, when the input tax on domestic purchase or importation of goods or properties by a VAT registered person shall be creditable, subject to the provision of Section 112 of the same Code. Section 110 provides:

"**SEC. 110.** ***Tax Credits.*** —

(A) *Creditable Input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

xxx xxx xxx

(b) Purchase of services on which a value-added tax has been actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

xxx xxx xxx

(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112. (As amended by R.A. 9361, approved on November 21, 2006)"

This Court has consistently ruled that it is obligatory on the part of the petitioner to declare the input VAT in the corresponding taxable quarters when the purchases of goods were consummated, as evidenced by VAT official receipts. This is in keeping with this Court's decision in the case of *Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue*[4], the pertinent portions of which are hereunder quoted to wit:

"We agree with the respondent.

The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:

'Sec. 110. *Tax Credits.* —

A. *Creditable Input Tax.* —

2. The input tax on domestic purchases of goods or properties shall be creditable:

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[4] CTA Case Nos. 6368 and 6480, December 15, 2004

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

However, in the case of purchases of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.'

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.

In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004,*** this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, i.e., upon issuance by the seller of the VAT official receipt evidencing receipts of the payment for services performed or yet to be performed.'

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt."

Applying the above ruling, petitioner's claimed input VAT in the amount of P865,020.72 cannot be considered since the input taxes should have been declared in the corresponding taxable quarter when the purchases or importation of goods of properties were consummated pursuant to Section 110(A) in relation to Section 112(A) of the NIRC of 1997, as amended.

Going now to petitioner's second ground, petitioner avers that this Court committed a grievous error in treating or classifying petitioner's imports, for which it paid corresponding input VAT of P1,561,197.00, as capital goods, hence, spread over 60 months.

Petitioner, moreover, stressed that based on the description of the imported items in the corresponding import entry declarations most, if not all, of the items were spare parts or supplies used in the mining operation which are subjected to extensive, strenuous and stressful use because of the very nature of petitioner's business operation; thus, the useful life thereof do not last longer than one year and, therefore, cannot be classified as capital goods.

Petitioner, finally, argues that it had not reflected any purchase of capital goods in its quarterly VAT return for the 4th quarter of 2008. What was reflected in the VAT return are "Importations of goods other than capital goods" in item 21G[5], because as far as petitioner is concerned, all the imported goods during the period in question were either spare parts or supplies the estimated useful lives of which were not longer than one year.

After a careful and thorough evaluation and consideration of petitioner's arguments as well as further verification of the records of the case, this Court finds for the petitioner.

WHEREFORE, premises considered, petitioner's MOTION FOR PARTIAL RECONSIDERATION is hereby **GRANTED**. The July 30, 2012 Decision of this Court is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** to petitioner in the revised amount of P1,666,242.11, representing its unutilized input VAT for the 4th quarter of 2008, computed as follows:

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[5] Exhibit "L-2"

Claimed Input VAT		₱2,567,435.71
Less: Disallowances		
Supported by documents dated 3rd quarter of 2008	₱865,020.72	
Supported by documents other than VAT OR's	36,172.88	901,193.60
Refundable Unutilized Input VAT		**₱1,666,242.11**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ERNESTO D. ACOSTA
Presiding Justice