REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILEX MINING CORPORATION, Petitioner,	CTA CASE NO. 8371
	Members:
-versus-	UY, *Chairperson and* FABON-VICTORINO, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	APR 15 2014 ; 3:00p.m.

x- -x

AMENDED DECISION

Fabon-Victorino, J.:

The following incidents are for resolution of the Court:

1) Respondent's Motion for Reconsideration (Decision of 12 November 2013) dated December 20, 2013, with petitioner's Comment dated January 22, 2014; and

2) Petitioner's Motion for Partial Reconsideration (of Decision dated 12 November 2013) dated January 6, 2014, to which respondent did not file any comment/opposition.

The dispositive portion of the assailed Decision of November 12, 2013, reads as follows:

> **WHEREFORE**, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** petitioner Philex Mining Corporation the amount of **P36,650,834.57**, representing the latter's unutilized excess input VAT attributable to zero-rated sales for the 3rd quarter of 2009.
>
> **SO ORDERED.**

<u>Respondent's Motion for Reconsideration</u>:

While respondent admits that petitioner's administrative claim was timely filed, she asserts that its judicial claim was filed beyond the prescriptive period on November 10, 2011. Respondent claims that the thirty (30) day-rule is not applicable to the instant case as she has yet no ruling in the administrative claim, the receipt of which shall commence the 30-day period to appeal.

The same is true with the required one hundred twenty (120) day-rule for her to act on the application for refund in the absence of proof of petitioner's submission of complete documents that will serve as the reckoning point of the mandatory 120-day period.

Additionally, the documentary requirements under Section 113 (C) and 114 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Sections 4.113-3 and Section 4.114-1 (A) of Revenue Regulations No. 16-2005, were not complied with by petitioner.

Lastly, tax refunds are in the nature of tax exemptions, thus, they are construed *strictissimi juris* against the person or entity claiming the exemption.

In its Comment, petitioner asserts that no less than the Supreme Court, in the cases of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1], *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*[2] and the latest consolidated cases of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue; Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*[3] had consistently ruled that the two-year prescriptive period in Section 112(A) of the NIRC of 1997, as amended, applies only to the filing of the application for refund with respondent and not to appeals before the Court since Section 112(C) prescribes a different period for filing a judicial claim, viz., within 30 days after the expiration of the 120-day period.

Applying the principle laid down in the above cited cases, respondent had until October 13, 2011 to act on petitioner's claim, reckoned from the filing thereof on June 15, 2011. Since respondent failed to act on the claim within the 120-day period, petitioner had thirty days from October 13, 2011, to seek judicial review. Thus, its Petition for Review was seasonably filed before the Court on November 10, 2011.

Petitioner further maintains that it is not legally required to prove compliance with the requirements in Sections 4.113-3 and Section 4.114-1 (A) of Revenue Regulations No. 16-2005 since it must only satisfy those under Section 112(A) of the NIRC of 1997, as amended, to be entitled to a refund of unutilized input VAT attributable to zero-rated sales.

Even assuming *arguendo* that petitioner failed to comply with the accounting and reportorial requirements, respondent's recourse is to enforce the civil and criminal penalties against it under Title X of the NIRC of 1997, as amended.

---

[1] G.R. No. 184823, October 6, 2010.
[2] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[3] G.R. Nos. 193301 and 194637, March 11, 2013.

Finally, respondent had already used petitioner's failure to comply with the said requirements as grounds for her appeal before the Supreme Court[4], which was denied, from which it could be inferred that failure to meet such additional requirements would not constitute reversible error.

Respondent's motion for reconsideration deserves scant consideration as she merely reiterates the arguments in her Answer dated February 9, 2012 and Memorandum dated February 25, 2013, which the Court already addressed and exhaustively discussed in the assailed Decision of November 12, 2013. The disquisition from pages 8 to 14 of the assailed Decision clearly shows that petitioner submitted the necessary documents for its administrative claim for refund and timely sought judicial intervention.

Petitioner's Motion for Partial Reconsideration:

In its Motion for Partial Reconsideration, petitioner complains the Court's disallowance of the input tax attributable to its export sales to Louis Dreyfus Commodities Metals Swisse SA for not being qualified to VAT zero-rating as it exceeded the allowed number of invoices to be printed and issued per BIR permit to print. In relation to the said invoices, petitioner explains that apart from BIR Permit No. OCN3AU0000030052 dated April 19, 1999, it was also issued BIR Permit No. OCN8AU0000065595 on January 26, 2006[5], which authorized the printing and use of sales invoices bearing Serial Numbers 2501 to 2900, which the Court-commissioned Independent Certified Public Accountant (ICPA) had overlooked. Such fact can be seen printed at the bottom left hand corner of Provisional Invoice No. 2558 dated March 6, 2009 and Provisional Invoice No. 2559 dated March 31, 2009[6], which were the counterparts of

---

[4] *Commissioner of Internal Revenue vs. Philex Mining Corporation*, G.R. No. 207049, November 11, 2013.
[5] Annex "A" of petitioner's Motion for Partial Reconsideration.
[6] Exhibits "F-6-b" and " F-7-b".

Final Sales Invoice Nos. 2568 and 2574.[7] Moreover, BIR Permit No. OCN8AU0000065595 is also reflected at the bottom of all the provisional and final sales invoices that it issued to Pan Pacific Copper Co.[8] Thus, Final Invoice Numbers 2568 and 2574 are BIR-registered since they are within the Numbers 2501 to 2900 authorized under Permit No. OCN8AU0000065595. Consequently, the export sales in the net amount of US$1,393,958.00 should not have been deducted from its zero-rated sales for the third quarter of 2009. In fine, it is entitled to the refund of ₱37,379,000.22.

The Court finds petitioner's motion meritorious.

As petitioner points out, printed at the bottom left hand corner of all the other sales invoices, such as the provisional and final sales invoices that it issued to Pan Pacific Copper Co[9], is BIR Permit No. OCN8AU0000065595 dated January 26, 2006. Said BIR Permit authorized the printing and use of sales invoices bearing Serial Numbers 2501 to 2900. Thus, considering that the subject Final Sales Invoices PX-2568 and PX-2574 are within the Serial Numbers 2501 to 2900 covered by BIR Permit No. OCN8AU0000065595 dated January 26, 2006, they should be considered, even if the previous BIR permit is indicated at the bottom part. The Supreme Court has consistently ruled that the BIR authority to print is not required to be reflected or indicated on invoices or receipts. What is important is that it has been secured or obtained by the taxpayer and that invoices or receipts are duly registered.

As held in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,*[10] to wit:

Printing the ATP on the invoices or receipts is not required.

[7] Exhibits "F-6-c" and "F-7-c".
[8] Exhibits "F-1-b" to "F-5-b" and "F-1-c" to "F-5-c".
[9] Exhibits "F-1-b" to "F-5-b" and "F-1-c" to "F-5-c".
[10] G.R. No. 172378, January 17, 2011.

It has been settled in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[11] that **the ATP need not be reflected or indicated in the invoices or receipts because there is no law or regulation requiring it. Thus, in the absence of such law or regulation, failure to print the ATP on the invoices or receipts should not result in the outright denial of a claim or the invalidation of the invoices or receipts for purposes of claiming a refund**.

ATP must be secured from the BIR.

But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238 of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264 of the NIRC.

xxx xxx xxx

xxx In the case of *Intel,* we emphasized that:

> **It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, what is**

w

[11] G.R. No. 166732, April 27, 2007.

> **important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.**
>
> xxx xxx xxx
>
> All told, the non-presentation of the ATP and the failure to indicate the word "zero-rated" in the invoices or receipts are fatal to a claim for credit/refund of input VAT on zero-rated sales. **The failure to indicate the ATP in the sales invoices or receipts, on the other hand, is not.** In this case, petitioner failed to present its ATP and to print the word "zero-rated" on its export sales invoices. Thus, we find no error on the part of the CTA in denying outright petitioner's claim for credit/refund of input VAT attributable to its zero-rated sales. (Boldfacing supplied).

In sum, petitioner is entitled to a refund or issuance of a tax credit certificate in the adjusted amount of ₱37,379,000.22, representing its unutilized excess input VAT attributable to its zero-rated sales for the 3rd quarter of 2009.

WHEREFORE, respondent's Motion for Reconsideration dated December 20, 2013 is hereby **DENIED,** for lack of merit.

On the other hand, petitioner's Motion for Partial Reconsideration is **GRANTED**. Accordingly, the assailed Decision of November 12, 2013 is hereby **MODIFIED** as follows:

> **WHEREFORE**, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of

Internal Revenue is hereby **DIRECTED TO REFUND** petitioner Philex Mining Corporation the amount of **P37,379,000.22**, representing the latter's unutilized excess input VAT attributable to zero-rated sales for the 3rd quarter of 2009.

SO ORDERED.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

ATTESTATION

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

ERLINDA P. UY
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 Amended 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