REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NO. 8600**
	Members: **BAUTISTA,** *Chairperson*
- versus -	**FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 8 2015 3:47 p.m.

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RESOLUTION

BAUTISTA, J.:

For resolution is respondent's "Motion for Reconsideration (Decision of 14 May 2015)" filed on June 18, 2015; with petitioner's "Comment" filed on July 30, 2015.

On May 14, 2015, the Court promulgated a Decision, the dispositive portion states:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND**

VAT from zero-rated transactions for the 4th quarter of 2010.

SO ORDERED."

Respondent's Arguments

Respondent alleges that petitioner failed to submit complete documents to support its application for refund, therefore the period of 120 days prescribed in Section 112(C) of the 1997 National Internal Revenue Code, as amended ("NIRC") did not start to run. Consequently, the judicial claim was filed prematurely warranting the dismissal of the Petition for Review.

Finally, she alleges that petitioner failed to comply with the Accounting Requirements of maintaining subsidiary sales journal and purchase journal, and the filing of monthly Value Added Tax ("VAT") return as provided in Sections 113(C), 114(A) of the NIRC as implemented by Sections 4.113-3, 4.114-1(A) of Revenue Regulations No. 16-2005, respectively.

Petitioner's Counter-Arguments

Petitioner avers that complete documents were submitted as substantiated by the Judicial Affidavit of Ms. Eileen Rodriguez, its Accounting Manager.

Furthermore, it alleges that the determination of when the documents are complete rest on it and not on respondent.

Finally, it argues that there is nothing in the provision of Section 112(A) of the NIRC that requires the presentation of subsidiary sales journal and subsidiary purchase journal in order for it to be entitled to refund, or issuance of a tax credit certificate on its claim of input tax attributable to zero-rated sales.

From the foregoing arguments raise, the pivotal issues to be resolved are: a) whether the 120-day period provided in Section 112(C) of the NIRC has not begun to run when petitioner filed its administrative claim; and b) whether the subsidiary sales journal and purchase journal, and the filing of monthly Value Added Tax ("VAT") returns are requisites for petitioner's entitlement to a refund of its excess input taxes for the 4th quarter of 2010.

For the first issue, relevant is Section 112(C) of the NIRC which provides:

> Sec. 112. *Refunds or Tax Credits of Input Tax.* -
>
> x x x x
>
> (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.
>
> 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.

Interpreting the foregoing, the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue*[1] held that: "Section[s] 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C)." ("Emphasis supplied").

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[1] G.R. No. 205543, June 30, 2014, 727 SCRA 565.

On the other hand, in the case of *Commissioner of Internal Revenue vs. Toledo Power, Inc.*,[2] the Supreme Court provided that Section 112(C) expressly grants the Commissioner 120 days from the date of submission of complete documents to resolve the issue of refund or issuance of tax credit certificate for creditable input taxes.

And in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[3] the complete documents has been interpreted to mean those 'relevant supporting documents' necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer.

Therefore, when petitioner filed its administrative claim together with its supporting documents on August 28, 2012[4] as shown by its claim stab, the 120-day period given to respondent to decide on the claim had begun to run. Counting 120 days therefrom, respondent had until December 26, 2012 to rule on the matter and petitioner had until January 25, 2013 to file its Petition for Review. Since petitioner filed its Petition for Review on January 9, 2013, the Petition for Review was filed on time.

Now for the second issue, the reliance of respondent of Section 113(C) of the NIRC which pertains to the Accounting Requirements of maintaining subsidiary sales journals and purchase journals, and Section 114 of the NIRC which pertains to the filing of a monthly return, is misplaced.

Under Section 112(A) of the NIRC, which provides for the requisites of claims for refund or issuance of a tax credit of unutilized input VAT on zero-rated or effectively zero-rated sales, speaks of taxable quarter, to wit:

> "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

[2] G.R. No. 183880, January 20, 2014, 714 SCRA 276.
[3] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253.
[4] *Id.*, Exhibit "B-1," p. 55.

> 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: *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." ("Emphasis supplied").

Likewise, under Section 110(B) of the NIRC, which provides for the effect of excess output or input tax in claims for refund or issuance of tax credit of unutilized input VAT, uses the phrase "at the end of the taxable quarter."

Therefore, it is clear from the foregoing that what is material in claims for refund or issuance of a tax credit certificate of unutilized input VAT is the filing of the quarterly VAT returns and not the filing of the monthly returns.

Since petitioner filed its quarterly VAT return for the 4th quarter,[5] the requisite for filing a return on per taxable quarter basis has been complied with.

Finally, maintaining a subsidiary sales journal and purchase journal provided under Section 113(C) of the NIRC is not mandatory.

Under Section 113(C) of the NIRC, it provides:

[5]Records, pp. 14-17.

> "(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."("Emphasis supplied").

Therefore, Section 113(C) of the NIRC should not be read in isolation as it is clearly stated that the provisions of Section 233 of the NIRC should be considered.

Under Section 233 of the NIRC, it provides:

> "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 where 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 supplied").

Clearly from the foregoing, maintaining subsidiary sales journals and purchase journals are optional.

Thus, the failure of petitioner to file or maintain subsidiary sales journals and purchase journals is not vital to its claim.

WHEREFORE, in the light of the foregoing, respondent's "Motion for Reconsideration (Decision of 14 May 2015)," is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice