REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILEX GOLD PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6829

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

SEP 19 2008

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DECISION

BAUTISTA, *J.*:

The instant *Petition for Review* seeks the refund of the amount of **FOUR HUNDRED TWENTY FOUR THOUSAND TWO HUNDRED FIFTEEN AND 94/100 PESOS (P424,215.94)**, representing petitioner's alleged excess input value-added tax on its purchases of taxable goods and services, attributable to zero-rated sales of mine products for the fourth quarter of taxable year 2001.

Philex Gold Philippines, Inc. (petitioner) is a corporation organized under Philippine laws, with principal office at 27 Brixton St., Pasig City. It is engaged in the mining business, including the exploration and operation of mine properties for commercial production and marketing of mine products produced from it.[1] Petitioner is a value-added tax (VAT)-

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[1] Par. 1, Consolidated Joint Stipulation of Facts and Issues, *Rollo*, p. 58.

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registered taxpayer, with VAT Registration Certificate RDO Control No. 96-043-004533/000863 dated September 6, 1996.[2]

The Commissioner of Internal Revenue (respondent) is the government official 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 National Internal Revenue Code (NIRC). He holds office at the Bureau of Internal Revenue (BIR) National Office, Diliman, Quezon City.

Petitioner entered into a contract with Johnson Matthey Public Limited Company of England (Johnson Matthey) to supply the latter with "gold dore in the form of gold bars".[3] The contract is for a period of three years or from January 1, 2001 to December 31, 2003. It is in the nature of a refining agreement, wherein Johnson Matthey receives gold bars exported by petitioner, refines the same to determine its value, then purchases the gold from petitioner based on its refined value.[4] However, this refining agreement is akin to a sales agreement since there was no known instance when the refined gold by Johnson Matthey was not purchased by it.

For the fourth quarter of taxable year 2001, petitioner filed an Amended Quarterly VAT Return with the BIR, declaring zero-rated sales of P206,424,115.53 and total input VAT of P424,215.94.[5] The details are shown below:

Zero-rated sales	P 206,424,115.53	
Output Tax Due		-0-
Input Tax Carried Over from		
Previous quarter	3,780,897.96	
Input Tax On:		
Domestic Purchases	(114,901.06)	
Importations-Capital Goods	539,117.00	
Total Available Input Tax		4,205,113.90
Less: Deductions from Input Tax		-0-
Net Creditable Input Tax		4,205,113.90
VAT Payable/Excess Input Tax		(4,205,113.90)

[2] Annex "A", Petition for Review, *Rollo*, p. 5.
[3] Exhibit "L"; Transcript of Stenographic Notes (TSN), January 23, 2007, p. 6.
[4] TSN, October 6, 2005, pp. 20-24.
[5] Exhibit "C".

On the belief that it is entitled to a refund of its excess input taxes for the fourth quarter of taxable year 2001, on September 12, 2003, petitioner filed with the BIR its Applications for Tax Credit/Refund of excess input VAT paid for the periods covering October 1 to December 31, 2001 in the amount of P424,215.94.[6] While the Amended VAT Return shows excess input tax in the amount of P4,205,113.90, petitioner submits that its administrative claim for refund pertains only to the excess input tax on domestic purchases and input tax on importations of capital goods in the amount of P424,215.94.

On October 8, 2003, petitioner likewise filed its claims for refund or tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance via Application No. 42510, in the amount of P424,215.94, representing the excess input VAT for the fourth quarter of 2001.[7]

Inasmuch as it has yet to receive a response from respondent and before it could be barred by prescription, petitioner filed this instant *Petition for Review* on December 3, 2003, pursuant to Sections 112(D) and 229 of the NIRC of 1997.[8]

On February 27, 2004, respondent filed his *Answer* raising the following Special and Affirmative Defenses:

> "3. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
>
> 4. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;
>
> 5. The Petitioner should prove that its legal basis for claiming for the amount being refunded."

During the pendency of the case, the parties filed a *Joint Motion to Consolidate* on April 26, 2004, praying for the consolidation of this instant case with CTA Case No, 6779 also entitled "Philex Gold Philippines, Inc. vs. Commissioner of Internal Revenue", for the following reasons:

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[6] Par. 4, Consolidated Joint Stipulation of Facts and Issues, *Rollo*, p. 58; Annex "C", Petition for Review, *Rollo*, p. 8.
[7] Par. 5, Consolidated Joint Stipulation of Facts and Issues, *Rollo*, p. 59; Annex "D", Petition for Review, *Rollo*, p. 9.
[8] Par. 8, Consolidated Joint Stipulation of Facts and Issues, *Rollo*, p. 59.

1. the same witnesses will testify on similar facts and issues in the two cases;
2. the same documentary evidence will be presented, except for those relevant to each taxable quarter; and
3. the issues to be tried and resolved in both cases are the same.

This Court granted the parties' *Motion to Consolidate* via Resolution dated May 20, 2004. However, petitioner filed on January 28, 2005 a *Motion to Withdraw Petition for Review in CTA Case No. 6779*, on the ground that its claim for tax refund of excess input taxes covering the third quarter of taxable year 2001 has become moot due to the issuance by the Bureau of Customs of a Tax Credit Certificate in the amount of P357,908.00.[9] Hence, the amount involved in the instant case reverted to the original claim of P424,215.94, representing petitioner's alleged excess input VAT for the fourth quarter of taxable year 2001.

During the hearing of the case, petitioner presented various documentary evidence, such as final sales invoices[10], export declarations[11], certificates of remittance[12], passbook entries[13], and official receipts[14]. Petitioner submitted its Quarterly VAT Returns for taxable year 2002 to show that the excess input tax for the fourth quarter of 2001 were not carried over to and not applied against output VAT in the succeeding quarters.[15]

On June 6, 2007, respondent manifested that he is submitting the case for resolution without further proceedings for the presentation of his evidence.[16]

The case was finally submitted for decision on September 24, 2007, upon receipt of petitioner's Memorandum dated September 20, 2007, *sans* respondent's Memorandum.

The parties jointly stipulated the following issues[17] for this Court's resolution:

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[9] *Rollo*, pp. 76-78.
[10] Exhibits "M-1" to "M-6".
[11] Exhibits "M-1-a" to "M-7-a".
[12] Exhibits "N-1" to "N-2".
[13] Exhibits "N-1-a" and "N-2-a" to "N-2-l".
[14] Exhibits "P-1" to "P-4".
[15] TSN, April 4, 2006, pp. 11-14; TSN, October 6, 2005, pp. 14-15; Exhibits "H", "I", "J", and "K".
[16] *Rollo*, p. 129.

"1. Whether Petitioner's domestic purchases and importations of goods which are attributable to its direct and indirect export sales for the 3rd and 4th quarters of 2001 are duly supported by documentary evidence.

2. Whether the accumulated or excess input VAT was not utilized or applied by Petitioner against output VAT in the same 3rd and 4th quarters of 2001 or in the succeeding taxable year.

3. Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

4. Whether or not Petitioner is entitled to the refund of the excess input taxes in the total amount of P399,033.74 and P424,215.94 for the 3rd and 4th quarters of 2001, due to Petitioner being an exporter of mineral products."

The issues raised boil down to the lone issue of whether or not petitioner is entitled to a refund in the amount of P424,215.94, representing excess input taxes for the fourth quarter of taxable year 2001.

The pertinent provision on claims for refund of input taxes attributable to zero-rated or effectively zero-rated sales is Section 112(A) of the NIRC of 1997, as amended, which provides:

> "**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 or 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."

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[17] Consolidated Joint Stipulation of Facts and Issues, *Rollo*, pp. 59-60.

Based on the afore-quoted provision, in order for a taxpayer to be entitled to a refund or issuance of a tax credit certificate of its unutilized input VAT, the following requisites must be satisfied:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, petitioner claims that it made shipments and sales of gold to Johnson Matthey of London, England that are VAT zero-rated, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

In order to substantiate its export sales for the fourth quarter of taxable year 2001 and the claim that the foreign currency proceeds thereof were duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, petitioner submitted to this Court its sales invoices, bills of lading/airway bills, export declarations, bank certifications, bank credit advices, entries in petitioner's passbooks in local banks of the payments received, and official receipts.[18]

An examination of these documents reveals that petitioner's direct exports of gold to England may fall within those transactions referred to as subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

"**SEC 106. *Value-added Tax on Sale of Goods or Properties.*** —

(A) *Rate and Base of Tax.* — xxx

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

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[18] Exhibits "M-1" to "M-6", "M-1-a" to "M-7-a", "N-1" to "N-2", "N-1-a" and "N-2-a" to "N-2-l", "O-1" to "O-4", and "P-1" to "P-4".

(a) *Export Sales.* — The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas."

Nevertheless, Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended must be read in conjunction with Section 113(A) of the same Code and Section 4.108-1 of Revenue Regulations No. 7-95; which require that a VAT-registered person, shall for every sale, issue an invoice or receipt indicating the following information:

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

(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

"SECTION 4.108-1. *Invoicing Requirements* – All VAT registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx xxx

> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.
>
> If the taxable person is engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.
>
> The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

Furthermore, such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended, to wit:

> "**SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*** - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx"
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> "**SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.*** - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
>
> xxx xxx xxx"

Clearly from the foregoing, any taxpayer claiming VAT zero-rated direct export sales must present at least three documents, namely: (1) the sales invoice as proof of sale of goods; (2) the export declaration and bill of lading/airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Moreover, the sales invoices supporting the export sales must abide by the invoicing requirements under the law and regulations, *viz.*, the same must be duly registered with the Bureau of Internal Revenue and must contain all the mandatory information, namely: (1) the imprinted word "zero-rated"; and (2) the taxpayer's TIN-VAT number. In other words, only export sales supported by these documents may qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

A careful examination of the sales invoices[19] supporting petitioner's direct export sales of gold to England shows that the same had no indication that they are duly registered with the BIR. Even though failure to indicate the BIR Permit Number/Authority to Print in the actual invoice or receipt will not *per se* invalidate the same; petitioner should have presented proof that it had a BIR Authority to Print. And this it failed to do. Likewise, the word "VAT" after petitioner's TIN number was not imprinted; a clear violation of the invoicing requirements under Sections 113, 237, and 238 of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95.

Equally noteworthy is the fact that the airway bills[20] supporting the said sales cannot be given evidentiary value for being mere photocopies, in violation of the Best Evidence Rule. The Court, in fact, denied the admission of the said documentary evidence.[21] Accordingly, without the prescribed supporting documents, petitioner's direct export sales of gold to England cannot qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

In sum, since petitioner failed to prove its alleged zero-rated and effectively zero-rated sales through proper substantiation, its claim for refund cannot be granted.

[19] Exhibits "M-1" to "M-6".
[20] Exhibits "M-1-b" to "M-7-b".
[21] *Rollo*, pp. 122-123.

It is well-settled that tax refunds are in the nature of tax exemptions and as such must be strictly construed against the claimant; and that taxpayers have the burden of proving compliance with the mandatory provisions of the National Internal Revenue Code and pertinent revenue regulations when claims for refund or issuance of tax credit certificates are involved. Failure in this regard negates the granting of any claim for refund or issuance of tax credit certificate.

WHEREFORE, the instant *Petition for Review* is hereby **DISMISSED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division