REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8819

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

JUL 07 2016 4:20 pm

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RESOLUTION

COTANGCO-MANALASTAS, *J.*:

For resolution is respondent's *Motion for Reconsideration (on the Decision of the Honorable Court dated May 20, 2016)* filed on June 7, 2016. Respondent seeks reconsideration of this Court's Decision, promulgated on May 20, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱57,910,100.80**, representing its unutilized excess input VAT for the 2nd and 3rd quarters of 2012 attributable to its zero-rated receipts for the same period.
>
> **SO ORDERED**."

Respondent's motion is based on the following grounds:

(1) Petitioner failed to prove that it is a VAT-registered taxpayer;

(2) Petitioner failed to establish that the input taxes paid were actually attributable to its alleged zero-rated sales;

(3) Petitioner failed to prove the fact of actual receipt of the buyer of the goods it sold;

(4) Petitioner failed to submit the complete documentary requirements for its claim for refund; and

(5) The Court should not have considered as valid all the final invoices bearing dates later than the dates of sale of petitioner's goods.

In its *Comment/Opposition* filed on June 28, 2016, petitioner counter-argues that in the assailed Decision, the Court already made a categorical finding that petitioner is a VAT-registered taxpayer, citing Exhibits "P-16-i" and "P-16-j", which exhibits were formally offered and admitted by the Court.

Petitioner points out that the Certification issued by the Board of Investments (Exhibit "P-17") confirmed that petitioner exported 100% of its total sales volume/value for calendar year 2012. Moreover, the attribution made by the Court of the substantiated input VAT to the entire zero-rated sales and the proportionate allocation of said substantiated input VAT between the substantiated or valid zero-rated export sales and the portion of the export sales that did not qualify as zero-rated, on the basis of volume of sales, are in accordance with court decisions and the last proviso of Section 112(A) of the Tax Code.

Petitioner likewise contends that the requirement of Revenue Regulations (RR) No. 3-88 cited by respondent has long been superseded by RR Nos. 7-95 and 16-2005. These subsequent RRs did not carry over the provision of RR No. 3-88 that required proof of actual receipt of the goods by the buyer. Furthermore, petitioner presented and submitted in evidence more than sufficient proof that its export sales were received by the buyers.

Petitioner stresses that the two letters of petitioner to the One Stop Shop (OSS) Tax Credit Center of the Department of

Finance contained a summary or list of supporting documents (Exhibits "P-2-b" and "P-3-b") that accompanied the filing of the Claimant Information Sheets. Even the BIR Records contained the documents that petitioner submitted to the OSS.

Petitioner also points out that the reason for the much later dates of the final invoices was clearly explained by petitioner's accounting manager and the Court has already thoroughly considered and discussed this particular item.

After weighing the parties' arguments, this Court finds no compelling reason to reverse or modify the assailed Decision.

A perusal of respondent's motion for reconsideration reveals that the grounds relied upon are matters that were already considered, thoroughly discussed and passed upon in the assailed Decision, thus, the Court will no longer address the same.

Anent the issue of submission of complete documents, records show that petitioner, upon filing of its administrative claim for refund or tax credit, simultaneously submitted supporting documents[1].

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[2], the Supreme Court held that it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under Revenue Memorandum Circular No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.

Applying the foregoing, records do not show that a written notice was sent by the BIR informing petitioner that

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[1] Exhibits "P-2-b" and "P-3-b".
[2] G.R. No. 207112, December 8, 2015.

the documents submitted were incomplete or required petitioner to submit additional documents. Thus, by failing to inform petitioner of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.

WHEREFORE, premises considered, the instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Wellness Leave)
CAESAR A. CASANOVA
Associate Justice