REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILEX MINING CORPORATION,
Respondent.

CTA EB No. 1097
(CTA Case No. 8517)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 17 2015

x- 4:29 p.m. - x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) seeking the nullification of the Decision dated October 9, 2013 and the Resolution dated November 26, 2013 of this Court's Second Division in CTA Case No. 8517, entitled "Philex Mining Corporation v. Commissioner of Internal Revenue" which partially granted respondent's claim for refund/tax credit in the amount of ₱27,740,113.10, representing its unutilized and excess input VAT attributable to its zero-rated sales for the first quarter of 2010.

THE PARTIES

Petitioner Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 4th Floor, BIR National

Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes of this Honorable Court.

Respondent Philex Mining Corporation (Philex Mining) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 27 Brixton St., Pasig City. It is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. Respondent is VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987[1], under Bureau of Internal Revenue (BIR) Form No. 2303 as of January 31, 1997. It likewise has a duly approved Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.[2]

JURISDICTIONAL FACTS

On October 10, 2013, herein petitioner received a copy of the assailed Decision[3] promulgated on October 9, 2013. Petitioner filed a Motion for Partial Reconsideration of the Decision on October 22, 2013. On November 29, 2013, the Second Division issued a Resolution denying petitioner's Motion for Partial Reconsideration for lack of merit.

Since petitioner received a copy of the Resolution on November 29, 2013, it had until December 14, 2013 within which to file its Petition for Review in accordance with Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals[4] (RRCTA).

Petitioner timely filed its Petition for Review on December 9, 2014; and, hence, the petition falls squarely within the jurisdiction of the Court.

THE FACTS[5]

Respondent Philex Mining filed its original Quarterly VAT Return for the first quarter of 2010 on April 26, 2010. It subsequently filed an amended Quarterly VAT Return on February 13, 2012, which reflected total zero-rated sales of ₱1,767,587,083.42, importation of goods of ₱220,189,248.17 with input

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[1] *Docket*, p. 11.
[2] *Docket*, pp. 58-59.
[3] *Rollo*, pp. 10-31.
[4] Rule 8, Sec. 3(b) of the RRCTA gives petitioner a period of fifteen (15) days from receipt of the questioned Resolution within which to appeal by way of Petition for Review to the Court *En Banc*.
[5] *Docket*, pp. 166-171, as found by the 2nd Division.

tax of ₱26,422,709.98, and purchases of services of ₱148,113,198.50 with input tax of ₱17,773,583.82.[6]

On March 16, 2012, pursuant to Section 4.112-1 of Revenue Regulations (RR) No. 16-2005, respondent filed its claim for refund or tax credit in the amount of ₱44,196,293.60 with the One-Stop Shop Center of the Department of Finance, as evidenced by Claim Information Sheet No. 65482.[7]

Due to the CIR's inaction on the said administrative claim for refund, Philex Mining filed its Petition for Review in CTA Case No. 8517. In the CIR's Answer filed on August 10, 2012, she alleged the special and affirmative defense of prescription. The CIR contended that applying the provisions of Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997 and the Supreme Court's ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[8], Philex Mining's claim for refund for the 1st Quarter VAT input taxes had already prescribed because the judicial claim for refund was filed outside the two-year prescriptive period reckoning from the close of the taxable quarter when sales were made.

The CIR further contended that although the administrative claim for refund was filed on March 16, 2012 which is within the two-year prescriptive period, however, the judicial claim for refund of the first quarter should have been filed on March 31, 2012, but instead was filed beyond the two-year prescriptive period. Hence, prescription has set in. Further, the CIR argued that tax refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.

On September 18, 2012, the CIR filed a Motion to Dismiss[9] on the ground that the judicial claim for refund was filed beyond the two-year prescriptive period. In its Opposition[10] filed on October 9, 2012, Philex Mining argued that the two-year prescriptive period provided by law applies to administrative claims for refund filed with the BIR, not with this Court. In a Resolution[11] promulgated on October 25, 2012, the Second Division denied the CIR's Motion to Dismiss for lack of merit.

Trial ensued and Philex Mining presented testimonies of its witnesses and formally offered its documentary evidence marked as Exhibits "A" to "I", "K", and "M" to "Q", inclusive of sub-markings. In a Resolution[12] promulgated on May 24, 2013, the Court admitted the formally offered exhibits except Exhibits "B", "B-1", "B-2", "B-2-a", "B-3", "Q", and "Q-1". Thus, on June 5, 2013, Philex Mining filed an Urgent Motion for Partial Reconsideration

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[6] *Docket*, pp. 58-59.
[7] *Docket*, p. 59.
[8] G.R. No. 184823, Oct 6, 2010, 632 SCRA 422.
[9] *Docket*, pp.40-43.
[10] *Docket*, pp. 44-49.
[11] *Docket*, pp. 51-55.
[12] *Docket*, pp. 132-133.

(of Resolution dated May 24, 2013)[13]. In a Resolution[14] promulgated on June 10, 2013, the Court resolved to admit the denied exhibits.

During the hearing on June 10, 2013, the CIR, through counsel, manifested that the status report of the audit investigation was still on-going and that she would be submitting the case for decision. The Court then gave the parties thirty (30) days within which to submit their respective Memorandum.

The case was submitted for decision on July 3, 2013, after Philex Mining filed its Memorandum on June 17, 2013 and the CIR filed her Memorandum on June 25, 2013.[15]

On October 9, 2013, the Second Division issued the Assailed Decision which held:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount P27,740,113.10, representing its unutilized and excess input VAT attributable to its zero-rated sales for the first quarter of 2010."

On October 22, 2013, the CIR filed her Motion for Partial Reconsideration (Decision[16] dated October 9, 2013) which the Court denied for lack of merit in a Resolution[17] dated November 26, 2013.

On December 9, 2013, the CIR, petitioner herein, filed her Petition for Review[18].

In a Resolution[19] dated February 5, 2014, Philex Mining, respondent herein, was ordered to file its Comment within ten (10) days from receipt thereof. Respondent filed its Comment[20] on March 5, 2014.

On March 26, 2014, this Court issued a Resolution[21] giving due course to the Petition for Review and granting both parties a period of thirty (30) days from notice within which to file their respective memoranda.

On April 22, 2014, respondent filed a Manifestation (Re: Resolution dated March 26, 2014)[22] stating that it was adopting its arguments in its

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[13] *Docket,* pp. 134-138.
[14] *Docket,* p. 141.
[15] *Docket,* p. 163.
[16] Erroneously written as "*Resolution* dated October 9, 2013".
[17] *Rollo,* pp. 32-35.
[18] *Rollo,* pp. 1-9.
[19] *Rollo,* pp. 37-38.
[20] *Rollo,* pp. 39-42.
[21] *Rollo,* pp. 44-45.

Comment as its Memorandum. The Court *En Banc* noted respondent's Manifestation in a Minute Resolution dated April 24, 2014. On the other hand, petitioner filed her Memorandum on April 23, 2013.

In a Resolution dated May 19, 2014, the case was submitted for decision.

On June 18, 2014, petitioner filed a Motion to Admit the Attached Verification and Certification of Non-Forum Shopping and Revenue Delegation Authority Order No. 2-2007[26] alleging failure to attach the same due to inadvertence. The motion was granted by the Court *En Banc* in a Resolution[27] dated July 31, 2014 and petitioner's Verification and Certification of Non-Forum Shopping and Revenue Delegation Authority Order No. 2-2007 were admitted as part of the records of this case.

THE ISSUE

The singular issue raised by petitioner is whether or not majority of the Court's Second Division erred in deciding that Philex Mining was able to fully substantiate its claim for refund.

Specifically, petitioner alleges the following:

1. Philex Mining failed to comply with the invoicing requirement because the invoices it submitted, namely, Exhibits "E-1-b", "E-1-c", "E-2-b", "E-2-c", "E-3-b", "E-3-c", "E-4-b", "E-4-c", "E-5-b", "E-5-c", "E-6-b", and "E-6-c"[28] were not imprinted with the words "Zero-rated"; and

2. Philex Mining's claim includes transactions outside the period of the claim.

THE RULING OF THE COURT

Before discussing the substance of the petition; first, a clarification ought to be made by the Court for future reference of the parties.

In its Petition for Review, petitioner characterizes the Assailed Decision as a "majority decision". This is evident from petitioner's opening paragraph which states:

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[22] *Rollo*, pp. 46-47.
[26] *Rollo*, unnumbered pages.
[27] *Rollo*, unnumbered pages.
[28] These are the provisional and final sales invoices that covered Philex Mining's export sales during the period covered by the claim.

> "PETITIONER, through the undersigned counsels, appeals from the **majority Decision** promulgated on October 9, 2013 x x x" *(Emphasis supplied).*

This is repeated in the portion of the Petition for Review designated as "Ground", thus:

> "24. The **majority in the 2nd division** erred in deciding that Respondent was able to fully substantiate its claim for refund; x x x" *(Emphasis supplied)*

Petitioner's characterization of the Assailed Decision as a "majority Decision" is false, inaccurate and misleading. A cursory look at the dispositive portion and the signatures of the justices of this Court's Second Division would show that **all members concurred in the Decision.** There was not a single voice of dissent as petitioner insinuates.

This Court finds this lack of candor disturbing, especially when it spills over to more substantial matters such as the merits of this case, as can be seen in the following discussion:

Invoices Imprinted with "Zero-Rated"

One of petitioner's two grounds for this Petition for Review is that the words "Zero-rated" are not imprinted on the face of the provisional and final sales invoices Philex Mining used for its export sales during the quarter covered by the claim. However, a perusal of the exhibits mentioned by the petitioner – with the exception of Exhibit "E-3-b" which will be discussed below – show otherwise. Exhibits "E-1-b", "E-1-c", "E-2-b", "E-2-c", "E-3-c", "E-4-b", "E-4-c", "E-5-b", "E-5-c", "E-6-b", and "E-6-c" **clearly show the words "Zero-rated"** printed near the top of the respective invoices, just below the corporate name an address. All petitioner had to do was to look at the respective exhibits before making such a careless assertion whose falsity was easily verifiable.

It is only with respect to Exhibit "E-3-b" which is the provisional invoice that covered the sales of gold to Heraeus Ltd. of Hong Kong that petitioner's claim rings true. However, this particular transaction has already been deducted from the zero-rated sales that Philex Mining declared in the Decision of the Second Division, thus:

> "x x x However, the Provisional Invoice No. PX-AUREX 116[29] and Final Invoice No. PX-AUREX 116[30] supporting petitioner's direct export sales of gold to Heraeus Ltd. in the amount of US$189,702.00 show that the same are not duly registered with the BIR, which is in violation of Section 238 of the NIRC of 1997, as amended. The serial numbers of the said

[29] Exhibit "E-3-b".
[30] Exhibit "E-3-c".

> invoices are outside the serial numbers ranging from 02501 to 02900 allowed to be printed per BIR Authority No. OCN 8AU0000065595 dated January 26, 2006 reflected in the other sales invoices[31] of petitioner. Clearly such invoices were printed outside petitioner's authority to print. **Thus, for petitioner's failure to substantiate its direct export sales of gold to Heraeus Ltd. in the amount of US$189,702.00 with proper VAT sales invoices, the same cannot qualify for VAT zero-rating**." *(Emphasis supplied)*

From the above discussion, it is clear that this ground of petitioner is not supported by the evidence presented; and hence, must fail.

Transactions Outside Period of the Claim, Excluded

It is to be noted that although petitioner alleged in support of its Petition for Review that respondent's claim for refund includes transactions that are outside the period covering the claim for refund, petitioner failed to cite a single instance thereof.

The Court *En Banc* finds that the Second Division did not err in only partially granting the refund for the amount of ₱27,740,113.10 to Philex Mining out of its original claim for refund totaling ₱44,196,293.60. The disallowed amounts, as have been extensively and thoroughly discussed by the Second Division in its Decision, already take into account transactions that fall outside the period of the claim for refund, among others.

Out of the original amount of excess and unutilized input VAT being claimed by Philex Mining in the amount of ₱44,196,293.60, a portion thereof, specifically ₱26,422,709.78, reflect an input VAT from importations of goods other than capital goods. However, as found by the Second Division, ₱11,478,271.00 thereof represents the amortization of input taxes on importation of capital goods from the fourth quarter of 2006 to fourth quarter of 2007 which has already been previously filed with this Court and, hence, constitutes a double claim.

Furthermore, the Second Division also gave weight to the Independent CPA's findings in disallowing the amount of ₱4,467,550.28, to wit:

> "Consequently the input taxes on [Philex Mining's] importation of goods in the amounts of ₱193,897.00,

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[31] Lower left hand portion of Exhibits "E-1-b", "E-2-b", "E-4-b" to "E-6-b"; "E-1-c", "E-2-c", and "E-4-c" to "E-6-c".

> ₱3,420,767.00, ₱375.00, and ₱181,385.00 as well as the input taxes on its domestic purchases of services in the amounts of ₱29,582.50 and ₱126,116.42 which are supported by **receipts dated outside the period of the claim shall be denied** because these should have been declared in the respective quarter when the VAT payments on the imported goods and purchase of services were made. Likewise, the input taxes of ₱41,078.40 pertaining to [Philex Mining's] domestic purchases of services supported by **undated VAT ORs** shall also be **disallowed because it cannot be ascertained whether the same pertain to the subject period of claim**.
>
> Similarly, [Philex Mining's] claimed input taxes on importation of goods in the amount of ₱469,205.78 as well as the input taxes on domestic purchases of services in the amount of ₱5,143.18 which **do not have supporting Bureau of Customs or bank official receipts or machine-validated Import Entry and Internal Revenue Declarations and VAT official receipts**, respectively, shall be **denied** pursuant to the afore-quoted provision of Section 110(A) in relation to Section 113(A) of the NIRC of 1997, as amended, and Section 4.110-8 of RR No. 16-05, as amended.
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> Moreover, [Philex Mining's] claimed input taxes on domestic purchase of services in the amount of ₱369,545.30 shall be **disallowed** because the **VAT was not separately indicated in the supporting VAT official receipts** which is in violation of Section 113(B)(2)(a) of the NIRC of 1997, as amended."[32] *(Emphasis supplied)*

The total disallowances made by the Second Division in its Decision amount to ₱16,315,366.58. These disallowances already include those transactions which fall outside the period of the claim for refund.

In *Real v. Belo*[33], the Supreme Court declared that, "Petitioner's bare allegation is far from sufficient proof for the Court to rule in her favor. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[34] In short, mere allegations are not evidence.[35]"

We find no reason to disturb the findings of this Court's Second Division.

[32] *Rollo*, pp. 28-29.
[33] G.R. NO. 146224, January 26, 2007.
[34] *Id.* citing *Domingo v. Robles*, G.R. No. 153743, March 18, 2005, 453 SCRA 812, 818; *Ongpauco v. Court of Appeals*, G.R. No. 134039, December 21, 2004, 447 SCRA 395, 400.
[35] *Id.* at Note 42, citing *Mayor v. Belen*, G.R. No. 151035, June 3, 2004, 430 SCRA 561, 567; *Marubeni Corporation v. Lirag*, 415 Phil. 29, 38 (2001).

WHEREFORE, premises considered, the above-captioned Petition for Review is hereby **DENIED** for lack of merit. The Decision of the CTA Second Division in CTA Case No. 8517 dated October 9, 2013 and the Resolution dated November 26, 2013, are hereby **AFFIRMED IN TOTO.**

SO ORDERED.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice