Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB Case No. 923 (CTA Case No. 8228) Present:
- versus -	CASTAÑEDA, JR., *Acting P.J.* BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *J.J.*
PHILEX MINING CORPORATION, Respondent.	Promulgated: JAN 07 2013 3:50 pm

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review[1], filed by petitioner-Commissioner of Internal Revenue (CIR), seeking the reversal and setting aside of the Decision (the "Assailed Decision"), promulgated on May 31, 2012, by the CTA Second Division in CTA Case No. 8228.

The facts of the case[2], as narrated in the Assailed Decision, are as follows:

[1] En Banc Rollo, pp. 5-13
[2] Par. 2-13, Petition for Review, En Banc Rollo, pp. 15-20

"Philex Mining Corporation (Petitioner) is a domestic corporation organized under Philippines laws, with principal office at 27 Brixton St., Pasig City. Petitioner is engaged in the mining business including the exploration and operation of mine properties and the commercial production and marketing of mine products, consisting principally of gold bullion and copper ore concentrates. It is a VAT-registered taxpayer as shown in its VAT Registration Certificate No. 35-6-000731 effective October 29, 1997 and BIR Form No. 2303 (as of January 31, 1997). Petitioner likewise had its Application for Zero-Rate approved effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), 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). She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner filed its Original Quarterly VAT Return for the third quarter of 2008 on October 22, 2008. It subsequently filed an Amended Quarterly VAT Return for the third quarter of 2008 on August 20, 2010, which reflected total zero-rated sales of P2,052,639,622.54, importation of goods of P190,297,383.34 with input VAT of P22,835,686.00, and purchases of services of P9,402,675.59 with input tax of P1,128,321.07.

Petitioner claims that pursuant to Section 112(A) of the NIRC of 1997, as amended, it is entitled to the refund of the total excess and unutilized input VAT in the amount of P23,964,007.07 paid or incurred during the third quarter of 2008. Thus, petitioner filed a claim for refund or tax credit in the amount of P23,964,007.07 as per Application No. 62463 with the One-Stop-Shop Center (OSSC) of the Department of Finance (DOF) on September 22, 2010, pursuant to Section 4.112-1 of RR No. 16-2005.

Respondent failed to act on petitioner's administrative claim for refund, prompting petitioner to file the instant Petition for Review on February 7, 2011.

In her Answer filed on April 1, 2011, respondent raised the following Special and Affirmative Defenses:

> '4. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by the respondent;
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> 5. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 6. Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with the following, viz:
>
> A. The registration requirements of a Value-Added taxpayer under the pertinent provision of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing revenue regulations;
>
> B. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the National Internal Revenue Code (NIRC) of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003).
>
> C. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax refund which is a condition sine qua non prior to the filing of such claim;
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> D. That the input taxes of P23,964,007.07 allegedly representing excess and unutilized input taxes for the 3rd Quarter of 2008, were:

1. Paid by petitioner;

2. Attributable to its zero-rated or effectively zero-rated sales; and

3. Such input taxes paid should not have been applied against any output tax.

E. The petitioner's claim for tax refund allegedly representing excess and unutilized input taxes for the 3rd Quarter of 2008 in the amount of P23,964,007.07 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

7. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims and of showing, by words too plain to be mistaken, that the legislature intended to exempt them;

8. And finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.'

On April 4, 2011, the Court issued a Notice of Pre-Trial Conference[3] requiring both parties and their counsels to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs. In compliance therewith, petitioner

[3] Division Docket, p. 32

submitted its Pre-Trial Brief[4] on April 19, 2011; while respondent filed her Pre-Trial Brief[5] on May 5, 2011.

As ordered by the Court, the parties submitted their Stipulation of Facts and Issues[6] on May 26, 2011; which was approved by the Court in a Resolution[7] dated May 30, 2011. In said Resolution, the Court also considered the pre-trial terminated and the parties were ordered to proceed with the trial on the merits, presenting only evidence not covered by their Stipulation of Facts.

On May 26, 2011, due to the voluminous nature of the evidence to be presented, petitioner filed a Motion to Commission Independent Auditor.[8] During the hearing on June 22, 2011, the Court granted petitioner's motion to commission an Independent Certified Public Accountant (ICPA) and consequently, Mr. Albert G. Alba was commissioned and appointed as ICPA.[9] On July 22, 2011, Mr. Alba submitted his Report dated July 21, 2011 to the Court.[10]

During trial, petitioner presented documentary and testimonial evidence to support its claim for refund. On October 12, 2011, petitioner formally offered before the Court the testimony of its witness, Ms. Eileen C. Rodriguez, the testimony of the Court-commissioned ICPA and documentary evidence marked as Exhibits "A" to "O", inclusive of their sub-markings. In a Resolution dated December 26, 2011, the Court admitted the foregoing evidence, except for Exhibit "B-1", which was denied admission for not being identified and marked during trial.

During the hearing on January 30, 2012, respondent's counsel manifested that she has no witness to present, and upon motion of respondent's counsel, respondent was given a period of thirty (30) days from January 30, 2012 or until February 29, 2012 within which to file her memorandum. The Court also gave

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[4] Division Docket, pp. 33-36
[5] Division Docket, pp. 37-39
[6] Division Docket, pp. 53-54
[7] Division Docket, p. 60
[8] Division Docket, pp. 47-48
[9] Minutes of the June 22, 2011 Hearing, Division Docket, p. 62
[10] Exhibit "D"

petitioner a period of twenty (20) days from notice within which to file its memorandum.

The case was submitted for decision on April 3, 2012, taking into consideration petitioner's Memorandum filed on March 6, 2012 and respondent's Memorandum filed on March 29, 2012."

On May 31, 2012, the CTA Second Division rendered the Assailed Decision[11] partially granting the Petition for Review and ordering respondent-Commissioner of Internal Revenue (petitioner herein) to refund the amount of P18,204,995.72 to petitioner-Philex Mining Corporation (respondent herein), representing excess and unutilized input VAT from its domestic purchases of services and importations of goods attributable to its zero-rated sales for the third quarter of 2008.

On June 28, 2012, petitioner-CIR filed a Motion for Reconsideration (Decision of 31 May 2012)[12] while respondent Philex filed its Opposition (To Respondent's Motion for Reconsideration)[13] on July 11, 2012.

In a Resolution[14] promulgated on July 24, 2012, the CTA Second Division denied petitioner-CIR's Motion for Reconsideration (Decision of 31 May 2012).

On August 28, 2012, petitioner-CIR filed the instant Petition for Review. Respondent filed its Comment (On Petitioner-CIR's Petition for Review)[15] on October 22, 2012.

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[11] Division Docket, pp. 120-146
[12] Ibid, pp. 147-153
[13] Ibid, pp. 156-159
[14] Ibid, pp. 161-166
[15] En Banc Rollo, pp. 56-61

The case was deemed submitted for decision on November 13, 2012.

The sole issue sought to be resolved by petitioner-CIR in the instant Petition for Review is:

> "Whether or not Petitioner is entitled to the refund or tax credit of the alleged excess and unutilized input taxes in the total amount of Php23,964,007.07 for the 3rd Quarter of 2008."

Petitioner contends that respondent failed to prove with the certainty that the accounting requirements mandated in Revenue Regulations No. 16-2005 and Section 114(A) of the 1997 Tax Code were strictly complied with.

Respondent, on the other hand, maintains that the only requisites that petitioner should comply with are those stated under Section 112(A) of the 1997 Tax Code, including the other two (2) requisites, namely: (a) that claimant is VAT-registered; and , (b) the foreign currency exchange proceeds were duly accounted for in accordance with the BSP rules and regulations.

Respondent further maintains that petitioner's position for requiring compliance with two (2) additional requisites, namely: (1) maintain a subsidiary sales journal and subsidiary purchase journal on which every sale or purchase is recorded, and (2) file monthly VAT declarations is without legal basis; that what the petitioner wants this Honorable Court to do is to add additional requisites or extend the provision of Section 112 beyond the clear import of the language used; that it is only Congress, in the exercise of its legislative power, who can add to the present number of requisites mentioned in Section 112 of the 1997 Tax Code by amending said provision.

After a careful and thorough evaluation and consideration of the records of the case, the Court En Banc finds no merit in the Petition for Review.

The records of the case indubitably show that the CTA Second Division had already fully and exhaustively resolved the issue in relation to the arguments/grounds raised in the Petition which We noted are mere rehash of the arguments proffered by petitioner in her Motion for Reconsideration.

There being no new matters or issue raised in the Petition for Review before Us, the Court En Banc finds no cogent reason to reverse the Assailed Decision dated May 31, 2012, of the CTA Second Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

(with ***Dissenting Opinion****)*
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
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 Article VIII, Section 13 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 the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PHILEX MINING CORPORATION,
Respondent.

CTA EB CASE NO. 923
(CTA Case No. 8228)

Present:
Castañeda, Jr., Acting P.J.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
JAN 07 2013 3:50pm

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DISSENTING OPINION

BAUTISTA, J.:

Based on the records of the case, respondent filed a claim for refund or tax credit in the amount of ₱23,964,007.07, as per Application No. 62463 with the One-Stop-Shop Center of the Department of Finance on September 22, 2010; while due to petitioner's inaction, respondent filed a Petition for Review, docketed as CTA Case No. 8228, with the Court on February 7, 2011; all during which, the then prevailing ruling in this Court – the reckoning of the two (2)-year prescriptive period – is from the close of the quarter,[1] and not within thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[2]

I submit that the ruling in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[3] is more in accordance

[1] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[2] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.
[3] G.R. No. 184823, October 6, 2010.

with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended, nonetheless, the two (2)-year prescriptive period provided under Section 229[4] of the same Code must also be considered.[5] Therefore, it must be borne in mind that no claim can be had, whether in the administrative or judicial *fora*, beyond the two (2)-year period provided under Section 112 of the 1997 National Internal Revenue Code, as amended, in relation to Section 229 of the same Code.

Stated differently, if the two (2)-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal to this Court.[6] Otherwise, this Court will be deprived of jurisdiction to entertain the case.[7]

Applying the above disquisitions, respondent had until September 30, 2010, within which to file both its administrative and judicial claims for refund or tax credit covering the third (3rd) quarter of the taxable year 2008.

In sum, applying the then prevailing jurisprudence at the time the claims were made, I find the administrative claim filed within the prescribed period, on the other hand, the Petition for Review was filed beyond the two (2)-year prescriptive period.

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[4] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[5] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB Case No. 416, February 4, 2009.

[6] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB Case No. 426, May 29, 2009.

[7] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB Case No. 410 (CTA Case No. 7387), March 18, 2009.

Accordingly, I vote that the Petition for Review be **GRANTED**. The Petition for Review, docketed as CTA Case No. 8228, should be **DISMISSED** for being filed out of time.

LOVELL R. BAUTISTA
Associate Justice