REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1334 (CTA Case Nos. 8553 & 8562)
-versus-	Present: DEL ROSARIO, PJ; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and RINGPIS-LIBAN, JJ.
PHILEX MINING CORPORATION Respondent.	Promulgated: OCT 19 2016 2:34 p.m.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review[1], petitioner Commissioner of Internal Revenue (CIR) assails the Decision dated March 31, 2015[2] and the Resolution dated June 24, 2015[3], rendered by the Court in Division in CTA Case Nos. 8553 & 8562 entitled *Philex Mining Corporation v. Commissioner of Internal Revenue*. The assailed Decision partially granted respondent Philex Mining Corporation's claim for refund in the reduced amount of P51,734,898.99, representing its zero-rated sales for the second and third quarters of 2010, while the similarly

[1] Docket, pp. 6-15.
[2] *Ibid.*, pp. 19-48.
[3] *Ibid.*, pp. 50-53.

assailed Resolution sustained the ruling by denying petitioner's prayer for reconsideration.

THE FACTS AND THE CASE

Petitioner is the government official with the authority to grant refund and tax credit of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On the other hand, respondent is a domestic corporation, 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. It is a VAT-registered taxpayer with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987, and under Bureau of Internal Revenue (BIR) Form No. 2303 as of January 31, 1997. It also 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.

On March 11, 2004, respondent entered into a Long Term Gold and Copper Concentrates Sales Agreement with Pan Pacific Copper Co., Ltd. On August 16, 2007, it also executed Contract No. P-100.00081 with Louis Dreyfus Commodities Metals Suisse SA, for the sale of copper concentrates.

On July 22, 2010 and on October 19, 2010, respondent filed its Quarterly VAT Returns for the second and third quarters of 2010, respectively. Subsequently it amended its second quarter VAT Return on February 13, 2012 to reflect the total zero-rated sales of P2,452,792,258.64, VATable sales/receipts of P27,777,801.60 with output tax of P3,333,336.19, importation of goods of P271,292,991.67, with input tax of P32,555,159.00, and purchase of services of P104,114,689.00 with input tax of P12,493,762.68. On February 13, 2012 , respondent amended its VAT Return for the third quarter of 2010 to reflect the total zero-rated sales of P4,257,201,223.97, VATable sales/receipts of P9,848,767.09 with output tax of P1,181,852.05, importations of P250,068,525.00 with input tax of P30,008,223.00, and purchase of services of P178,801,340.09 with input tax of P21,456,160.81.

On June 7, 2012 and June 22, 2012, respondent filed its claims for refund of the amounts of P45,048,921.68 and P51,464,383.81 for the second and third quarters of 2010, respectively, with the One-Stop Shop Center of the Department of Finance (DOF-OSS) per Claimant Information Sheet Nos. 62442 and 22002. Attached to the said claim were the letters both dated May 4, 2012, containing a list of supporting documents.

Claiming inaction on the part of petitioner, respondent filed two separate Petitions for Review with the Court in Division on October 9, 2012 (CTA Case No. 8553) and on October 25, 2012 (CTA Case No. 8562), seeking for the approval of its applications for refund of P41,715,585.49 and P50,282,531.76, representing its alleged excess and unutilized input taxes for the second and third quarters of 2010.

On November 29, 2012 and December 21, 2012, petitioner filed his respective Answers to the two (2) Petitions for Review claiming that respondent's claim for tax refund is subject to his administrative investigation and/or examination and that respondent must first prove strict compliance with the pertinent laws, rules, and regulations given that tax refunds are construed strictly against the taxpayer as they partake the nature of tax exemptions.

On May 13, 2014, the case was submitted for decision with respondent's Memorandum filed on February 25, 2014 and petitioner's Memorandum filed on May 6, 2014.

On May 31, 2015, the Court in Division promulgated the assailed Decision directing petitioner to refund in favor of respondent the amount of P51,734,898.99, representing its unutilized and excess input VAT attributable to its zero-rated sales for the second and third quarters of 2010.

On June 24, 2015, the Court in Division denied petitioner's plea for reconsideration of the foregoing Decision for lack of merit.

On August 5, 2015, petitioner filed the instant Petition for Review within the extended period granted by the Court *En Banc.*[4]

THE ISSUES

Petitioner claims that:

A. The accounting requirements mandated by Sections 4.113-3 and 4.114-1(A) of Revenue Regulations No. 16-2005 and Section 114(A) of the National Internal Revenue Code (NIRC) of 1997, were not proven with certainty.

B. The filing of the judicial claim for refund is premature.

Petitioner insists that respondent failed to prove compliance with the accounting requirements mandated by Sections 4.113-3 and 4.114-1(A) of Revenue Regulations No. 16-2005 and Section 114(A) of the NIRC of 1997, as amended, specifically the maintenance of the subsidiary sales journal and subsidiary purchase journal, which are mandatory in nature.

He further argues that there was no showing that respondent filed its monthly VAT Declarations (BIR Form No. 2550M). In fact, the said documents were not even presented as evidence during the hearing nor were they validated by the ICPA in his Report.

Respondent also failed to comply with the submission of complete documents in support of its administrative claim for tax refund pursuant to Section 112 (C) of the NIRC of 1997, as amended. Respondent only presented the Claimant

[4] Docket, p. 5.

Information Sheet, which only tends to establish that it filed the claim but does not show nor prove that the complete documents were submitted to petitioner. *Sans* the checklist of the documents submitted or the transmittal of documents, there is no evidence of the submission of the complete documents.

Even assuming *arguendo* that respondent submitted documents when it filed an administrative claim for refund at DOF-OSS, the same were not complete, in clear violation of the law. In view thereof, petitioner's 120-day period to decide the alleged claim for refund/tax credit did not commence to run rendering the filing of the judicial claim for refund with the Court in Division premature.

Lastly, respondent's failure to prove compliance with the conditions set forth by the law and rules is fatal since tax refunds are in the nature of tax exemptions and construed *strictissimi juris* against the person or entity claiming the exemption.

By way of Comment, respondent points out that the Court *En Banc* previously ruled in a case involving the same parties[5] that presentation before the Court of the subsidiary purchase/sales journal is not required for refund of input tax attributable to zero-rated sales. To be entitled to refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales, the taxpayer must only comply with the requisites provided under Section 112 of the NIRC of 1997, as amended.

In any event, the testimony of respondent's witness Eileen C. Rodriguez attesting[6] that respondent submitted supporting documents when it filed the Claim Information Sheet with the DOF-OSS on June 7, 2012 and June 22, 2012 negates petitioner's claim that respondent failed to submit complete documents in support of its administrative claim for refund. Hence, the 120-day period for petitioner to decide commenced to run on June 7, 2012 and June 22, 2012, and expired on October 5 and October 20, 2012,

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[5] Commissioner of Internal Revenue v. Philex Mining Corporation, CTA EB. No. 1116, January 7, 2015.
[6] Exhibit "A".

respectively. Counting thirty days from October 5, 2012 and October 12, 2012, respondent had until November 5, 2012 and November 20, 2012 to file a judicial claim for refund. In fine, respondent seasonably filed its Petitions for Review before the Court in Division on October 9, 2012 and October 25, 2012, in compliance with the mandate of Section 112 (C) of the NIRC of 1997, as amended.

Finally, respondent agrees with petitioner that claims for refund are strictly construed against the taxpayer, however, where sufficient evidence are presented in Court by the taxpayer-claimant, as in the present case, the Court must necessarily order the refund to the extent that is supported by evidence.

In compliance with the Court's Resolution dated October 26, 2015[7], respondent filed a Manifestation (Re: Resolution dated October 26, 2015)[8] stating that it is adopting its Comment filed on September 21, 2015 as its Memorandum. Petitioner did not file any despite notice, per the Report of the Judicial Records Division dated January 22, 2016[9]. Hence, the instant petition was submitted for decision on February 17, 2016[10].

THE RULING OF THE COURT *EN BANC*

The instant Petition for Review lacks merit.

A review of the arguments raised by petitioner in its main pleading shows that they were the very same flawed arguments which he raised in his earlier Answer and Motion for Reconsideration filed with the Court in Division which had been thoroughly discussed and passed upon in the assailed Decision of May 31, 2015 and Resolution of June 24, 2014. Be that as it may, and if only to put petitioner's mind to rest, the salient points shall be discussed anew.

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[7] Docket, pp. 69-70.
[8] *Ibid.*, pp.71-72.
[9] *Ibid.*, p.78.
[10] Docket, pp.82-83.

Petitioner finds error in the ruling which partially granted the refund or tax credit in favor of respondent in the reduced amount of P51,734,898.99 for the second and third quarters of 2010. Petitioner argues that respondent failed to comply with the accounting requirements mandated by Sections 4.113-3 and 4.114-1(A) of Revenue Regulations No. 16-2005 and Section 114(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.[11]

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[11] "SEC. 4.113-3. Accounting Requirements. - Notwithstanding the provisions of Sec. 233, all persons subject to VAT under Sec. 106 and 108 of the Tax Code shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which every sale or purchase on any given day is recorded. The subsidiary journal shall contain such information as may be required by the Commissioner of Internal Revenue.

A subsidiary record in ledger form shall be maintained for the acquisition, purchase or importation of depreciable assets or capital goods which shall contain, among others, information on the total input tax thereon as well as the monthly input tax claimed in VAT declaration or return."

"SEC. 4.114-1. Filing of Return and Payment of VAT. -

(A) Filing of Return. – Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return.

The term "taxable quarter" shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e., the calendar quarter or fiscal quarter).

Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter.

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The monthly VAT Declarations (BIR Form 2550M) of taxpayers whether large or nonlarge shall be filed and the taxes paid not later than the 20th day following the end of each month."

"SEC. 114. Return and Payment of Value-Added Tax. -

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five

Contrary to petitioner's insistence, there is nothing in Section 112 (A) of the NIRC of 1997, as amended, that requires the presentation of the subsidiary sales journal and subsidiary purchase journal and to show the filing of monthly VAT Declarations (BIR Form No. 2550M) to substantiate the subject claim for refund or credit.

As held in the assailed Decision, citing Section 112 (A) of the NIRC of 1997, as amended,[12] only the following requisites must be complied with in order that a taxpayer may be entitled to refund or issuance of tax credit certificate of its claimed input tax attributable to zero-rated sales:

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

All the foregoing requirements were complied with by respondent as thoroughly discussed in the assailed Decision of May 31, 2015. Hence, the Court *En Banc* is one with the Court in Division in ruling that respondent has sufficiently established its entitlement to the refund of its unutilized

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(25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches."

[12] "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, 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. xxxx" input VAT attributable to its zero-rated sales for the second and third quarters of 2010, but in the reduced amount of P51,734,898.99.

Further, the non-submission of respondent's subsidiary sales journal, subsidiary purchase journal and monthly VAT Declarations (BIR Form No. 2550M), is not fatal nor sufficient to deprive respondent of its right to refund given that respondent was able to establish compliance with the afore-cited requirements for refund.

Anent petitioner's second argument that respondent's filing of the judicial claim for refund is premature due to its failure to submit complete documents in support of its administrative claim for tax refund, pursuant to Section 112 (C) of the NIRC of 1997, as amended, this argument is certainly not new. This is an argument that petitioner uses quite so often in various appeals on refund cases. Note that the Court *En Banc* has been consistent in its ruling that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR complete documents in support of its administrative claim for refund.

Appeals in relation to claims for refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales is governed by Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended[13], which clearly

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[13] "SEC. 112. Refunds or Tax Credits of Input Tax. —

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> (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 Subsections (A) hereof.
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> 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. xxx"

provides that a taxpayer may appeal the denial or the inaction of petitioner CIR within thirty (30) days from receipt of the adverse decision or the expiration of the 120-day period given to the CIR to decide the claim, reckoned from the date of submission of complete documents.

But when is the submission of documents deemed complete for purposes of determining the 120-day period?

In the recent case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[14], the Supreme Court elucidated on the matter, in this wise:

> ". . . Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining when the supporting documents have been completed — 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. After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.
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> Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms what additional document must be presented in support of a

[14] G.R. No. 207112, December 8, 2015.

claim for tax credit or refund — it is the taxpayer who has the right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are actually complete as required by law — is for the CIR and the courts to determine. Besides, as between the taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC 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.

> Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received" as provided under RMC No. 49-2003."

To reiterate, the term "complete documents" under Section 112(C) of the NIRC of 1997 should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that respondent ought to know the tax records of all taxpayers.[15]

And as observed by the Court in Division, there is nothing in the record that shows that a written notice was sent by petitioner informing respondent that the documents it submitted for its administrative claim for refund were incomplete or requiring respondent to submit additional documents, thus the 120-day period started to run without interruption from June 7, 2012 and June 22, 2012, the dates when petitioner filed its administrative claims together with the supporting documents.

All said, petitioner timely filed its appeal via Petitions for Review on October 9, 2012 and October 25, 2012, as

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[15] Diageo Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 7846 and 7865, January 16, 2012.

both were filed within the 30-day period after the 120-day period ended.

WHEREFORE, the Petition for Review filed by petitioner Commissioner of Internal Revenue on August 5, 2015, is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution dated March 31, 2015 and June 24, 2015, respectively promulgated by Court in Division in CTA Case Nos. 8553 & 8562, are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
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

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

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice