REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

CTA Case No. 8517

- versus-

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 09 2013

3:45 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

This case involves a claim for refund in the amount of ₱44,196,293.60 allegedly representing Philex Mining Corporation's excess and unutilized input value-added tax (VAT) for the first quarter of 2010.

THE FACTS

Petitioner Philex Mining Corporation is a domestic 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 and the commercial production and marketing of mine products. Petitioner is VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987[1], and under Bureau of Internal Revenue (BIR) Form No. 2303 as of January 31, 1997. It likewise has a duly approved

[1] Annex "A-1", Petition for Review, docket, p. 11.

Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.[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. She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner 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 tax of ₱26,422,709.98, and purchases of services of ₱148,113,198.50 with input tax of ₱17,773,583.82.[3]

On March 16, 2012, pursuant to Section 4.112-1 of Revenue Regulations (RR) No. 16-2005, petitioner 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.[4]

Due to respondent's inaction on the said administrative claim for refund, petitioner filed the present Petition for Review on July 17, 2012.

In her Answer[5] filed on August 10, 2012, respondent alleged the following Special and Affirmative Defenses:

> "5. Section 112 Paragraphs (A) and (C) of the National Internal Revenue Code has this to say on Refund or Tax Credits of Input Tax and the Period within which to file Refund of Input Taxes, to wit:
>
> > ***'Section 112. Refund or Tax Credits of Input Tax –***

[2] Pars. 1 and 3, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, pp. 58-59.
[3] Par. 4, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 59.
[4] Par. 5, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 59.
[5] Docket, pp. 21-24.

> *(A.) Zero-Rated or Effectively Zero-Rated Sales – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, <u>within two (2) years after the close fo the taxable quarter when sales were made,</u> 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: xxxxxxx'*
>
> *xxx*
>
> *(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 Subsection (A) hereof.*
>
> *'In case of full or partial denial of the claim for tax refund or tax credit, or 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.*

6. In ***COMMISSIONER OF INTERNAL REVENUE vs. AICHI FORGING COMPANY OF ASIA, INC., GR No. 184823 dated October 6, 2010,*** the Honorable Supreme Court ruled, to wit:

> *'The above proviso [Section 112 (A) of the NIRC] clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales*

> ***were made pertaining to the input VAT regardless of whether said tax was paid or not. xxxxxxxxxxxxx [P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued. Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. xxxx'***
>
> ***xxxxx***
>
> ***'Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application for [tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.'***

7. Applying the provision of ***Section 112(A) and (C) of the National Internal Revenue Code*** and the ruling of the Honorable Supreme Court in ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*** the Petitioner's claim for refund of the 1st quarter VAT input taxes have already prescribed because the judicial claim for refund was filed outside the 2 year prescriptive period reckoning from the close of the taxable quarter when sales were made.

8. Although the administrative claim for refund was filed on March 16, 2012 which is within the 2 year prescriptive period, however, the judicial claim for refund of the 1st quarter was filed beyond the 2 year prescriptive period, which should have been filed on March 31, 2012. Hence, prescription sets in.

9. Well-established is the rule that tax refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.

10. In ***COMPAIGNIE FINCANCIERE*** [sic] ***SUCRES ET DENREES vs. COMMISSIONER OF INTERNAL REVENUE, GR No. 133834 August 28, 2006*** the Honorable Supreme Court ruled, to wit:

> ***'xxx Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted."***

On September 18, 2012, respondent filed a Motion to Dismiss[6] on the ground that the judicial claim for refund was filed beyond the two-year prescriptive period. In its Opposition[7] filed on October 9, 2012, petitioner 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[8] promulgated on October 25, 2012, this Court denied respondent's Motion to Dismiss for lack of merit.

During trial, petitioner 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[9] promulgated on May 24, 2013, this 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, petitioner filed an Urgent Motion for Partial Reconsideration (of Resolution dated May 24, 2013)[10]. In a Resolution[11] promulgated on June 10, 2013, this Court resolved to admit the denied exhibits.

During the hearing on June 10, 2013, respondent, through counsel, manifested that the status report of the audit

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[6] Docket, pp. 40-43.
[7] Docket, pp. 44-49.
[8] Docket, pp. 51-55.
[9] Docket, pp. 132-133.
[10] Docket, pp. 134-138.
[11] Docket, p. 141.

investigation is still on-going and that she will be submitting the case for decision. The Court then granted both parties thirty (30) days within which to submit their respective Memorandum.

The case was submitted for decision on July 3, 2013, after petitioner filed its Memorandum on June 17, 2013 and respondent filed her Memorandum on June 25, 2013.[12]

ISSUE

The parties jointly stipulated and submitted to the Court for resolution the following issue[13]:

> "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 ₱44,196,293.60 for the 1st quarter of 2010 due to Petitioner being an exporter of mineral products."

DISCUSSION/RULING

Petitioner anchors its claim for refund on Section 112(A) of the National Internal Revenue Code (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

[12] Docket, p. 163.
[13] Statement of the Issues, Stipulation of Facts and Issues, docket, p. 60.

> 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Based on the above-quoted provision, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of unutilized input VAT attributable to such zero-rated or effectively zero-rated sales upon compliance with the following requisites:

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.

This Court finds it appropriate to determine first petitioner's compliance with the fifth requisite pertaining to the timeliness of the filing of the instant claim, since it will determine the necessity of resolving petitioner's compliance with the other requisites.

As categorically stated under Section 112(A) of the NIRC of 1997, as amended, the application for tax credit certificate or refund must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the first quarter of 2010, which closed on March 31, 2010. Counting two years from this date, petitioner had until March 31, 2012 within which to file its administrative claim for refund. Clearly, petitioner's administrative claim for refund filed on March 16, 2012, with the One-Stop Shop Center of the Department of Finance under

Claim Information Sheet No. 65482[14] is well within the two-year prescriptive period prescribed under Section 112(A) of the NIRC of 1997, as amended.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (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 Subsection (A) hereof.
>
> 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."

The above provision provides that the BIR Commissioner has 120 days from the date of submission of complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of full or partial denial by the BIR Commissioner, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the BIR Commissioner. However, if after the 120-day period the BIR Commissioner fails to act on the application for refund or tax credit, the remedy of the taxpayer is to appeal the inaction of the BIR Commissioner to this Court within 30 days.

Applying Section 112(C) of the NIRC of 1997, as amended, the following are the pertinent dates to petitioner's claim for refund:

[14] Exhibits "B" to "B-1"; Par. 5, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 59.

Year 2010	Date of Filing of Administrative Claim	End of 120 days for Commissioner to decide	End of 30 days from expiration of 120 days	Date of Filing of Judicial Claim
1st Quarter	March 16, 2012	July 14, 2012	August 13, 2012	July 17, 2012

Evidently, petitioner timely filed its appeal by way of a Petition for Review on July 17, 2012, as the same was filed well within the 30-day period after the 120-day period ended on July 14, 2012.

Anent the first requisite, petitioner duly filed with the BIR its Quarterly VAT Return[15] for the first quarter of 2010, declaring the following:

VATable Sales/Receipt	₱ 26,785.75
Zero Rated Sales/Receipts	1,767,587,083.42
Total Sales/Receipts	1,767,613,869.17
Output Tax Due	3,214.29
Less: Allowable Input Tax	
Input Tax Carried Over from Previous Period	207,319,597.46
Current Transactions	
Importations of Goods Other than Capital Goods	26,422,709.78
Domestic Purchase of Services	17,773,583.82
Total Available Input Tax	251,515,891.06
Less: VAT Refund/TCC Claimed	21,900,928.26
Total Allowable Input Tax	229,614,962.80
Tax Overpayment	**₱229,611,748.51**

The Court-commissioned Independent Certified Public Accountant (CPA), Mr. Albert G. Alba, noted in his Report[16] dated February 18, 2013, that petitioner's zero-rated sales in the amount of ₱1,767,587,083.42 with US dollar value of US$38,433,665.00 represent petitioner's direct export sales of copper and gold. Per the Schedule of Export Sales[17], the amount of US$38,433,665.00 is broken down as follows:

[15] Exhibit "M-1".
[16] Exhibit "D", No. 5 of the Findings, p. 2.
[17] Exhibit "E".

Provisional Invoice No.	Exh.	Final Invoice	Exh.	Consignee	Amount Recorded in the General Ledger for the Current Quarter
Provisional Billings for Direct Export Sales of Copper					
PX - 2583	E-1-b	PX - 2590	E-1-c	Pan-Pacific Copper Co., Ltd.	19,615,328.00
PX - 2584	E-2-b	PX - 2592	E-2-c	Louis Dreyfus Commodities Metals Suisse SA	18,469,657.00
Provisional Billings for Direct Export Sales of Gold					
PX-AUREX 116	E-3-b	PX-AUREX 116	E-3-c	Heraeus Ltd.	189,702.00
Subtotal					38,274,687.00
Adjustment to Previous Quarter's Provisional Billings					
PX - 2577	E-4-b	PX - 2582	E-4-c	Pan-Pacific Copper Co., Ltd.	(9,694.00)
PX - 2578	E-5-b	PX - 2585	E-5-c	Pan-Pacific Copper Co., Ltd.	(14,763.00)
PX - 2581	E-6-b	PX - 2588	E-6-c	Pan-Pacific Copper Co., Ltd.	183,435.00
Subtotal					158,978.00
Total					**38,433,665.00**

Petitioner claims that its shipments and sales of copper concentrates to Pan-Pacific Copper Co., Ltd. of Tokyo, Japan and Louis Dreyfuss Commodities Metals Suisse SA, a Switzerland company, are VAT zero-rated pursuant to 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
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (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 (BSP);"

Based on the afore-quoted provision, in order for an export sale to qualify as zero-rated, the following conditions must be present:

1. there was sale and actual shipment of goods from the Philippines to a foreign country;
2. the sale was made by a VAT-registered person;
3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary to the first requisite, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, as amended, provide that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (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: *Provided*, That:
>
> xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" *(Emphasis supplied)*

"SEC. 4.113-1. ***Invoicing Requirements***. -

(A) **A VAT-registered person shall issue:**

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt.' All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official 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.

(B) Information contained in VAT invoice or VAT official receipt. - The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

In addition to the above-stated requirements, the invoice or receipt must be duly registered with the BIR as prescribed under Sections 237 and 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 and 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" *(Emphasis supplied)*

"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"

Pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), (2)(c) and (3) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1. sales invoice as proof of sale of goods;
2. export declaration and bill of lading or 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.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Petitioner complied with all the requisites for the VAT zero-rating of its export sales for the first quarter of 2010 but only to the extent of ₱1,758,862,575.75 out of the total reported zero-rated sales of ₱1,767,587,083.42.

The fact that petitioner is VAT-registered is not disputed.[18] Pursuant to its Long Term Gold and Copper Concentrate Sales Agreement[19] with Pan Pacific Copper Co., Ltd. of Tokyo, Japan and Contract No. P-100.00081[20] with Louis Dreyfus Commodities Metal Suisse SA of Switzerland, petitioner actually shipped mineral products to Pan Pacific Copper Co., Ltd. of Tokyo and Louis Dreyfus Commodities Metal Suisse SA of Switzerland[21], and generated export sales, as shown in petitioner's Schedule of Export Sales[22] and various export documents such VAT zero-rated provisional[23] and final[24] sales invoices, bills of lading[25], and export declarations[26]. Likewise, the foreign currency proceeds derived from said export sales were inwardly remitted and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* as evidenced by the bank certifications[27], entries in petitioner's passbook in local banks of the payments received[28], and Summary of Sales and Remittances[29] for the first quarter of 2010.

[18] Par. 3, Summary of Facts Admitted, Stipulation of Facts and issues, docket, p. 59.
[19] Exhibit "Q".
[20] Exhibit "P".
[21] Shipped to Japan, Exhibit "E-2" inclusive of submarkings.
[22] Exhibit "E".
[23] Exhibits "E-1-b" to "E-6-b".
[24] Exhibits "E-1-c" to "E-6-c".
[25] Exhibits "E-1-a" to "E-6-a".
[26] Exhibits "E-1" to "E-6".
[27] Exhibits "F-1" to "F-5".
[28] Exhibits "F-1-a" to "F-5-a".
[29] Exhibit "F".

However, the Provisional Invoice No. PX-AUREX 116[30] and Final Invoice No. PX-AUREX 116[31] 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 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[32] 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.

Only the remaining reported zero-rated sales for the first quarter of 2010 in the amount of US$38,243,963.00 with the peso equivalent of ₱1,758,862,575.75, as computed below, is subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended:

Declared *Zero*-Rated Sales in US$		38,433,665.00
Less: Sales to Heraeus Ltd. supported by invoice without authority to print (Invoice No. PX-AUREX 116)[33]		189,702.00
Valid Zero-Rated Sales in US$		38,243,963.00
Multiplied by Average peso to dollar rate:		
Declared Zero-Rated Sales in ₱	1,767,587,083.42	
Declared Zero-Rated Sales in US$	38,433,665.00	
Average peso to dollar rate		45.9905940123
Valid Zero-Rated Sales in ₱		**1,758,862,575.75**

After resolving that petitioner had VAT zero-rated sales for the first quarter of 2010 in the total amount of ₱1,758,862,575.75, the Court proceeds to determine whether petitioner complied with the second, third and fourth requisites to be entitled to a refund or tax credit of unutilized input VAT, *i.e.*, whether petitioner incurred input taxes in connection with its zero-rated sales and if said input taxes were not applied against any output VAT liability of petitioner.

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[30] Exhibit "E-3-b".
[31] Exhibit "E-3-c".
[32] 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".
[33] Exhibits "E-3-b" and "E-3-c".

Petitioner's amended Quarterly VAT Return for the first quarter of 2010 reflected an input VAT of ₱26,422,709.78 on importations of goods other than capital goods and input VAT of ₱17,773,583.82 on domestic purchases of services or a total amount of ₱44,196,293.60, as shown below:

	Purchases	Input Tax
Importations - Goods other than capital goods	₱ 220,189,248.17	₱ 26,422,709.78
Domestic Purchase of Services	148,113,198.50	17,773,583.82
Total	**₱368,302,446.67**	**₱44,196,293.60**

However, as reported by the Independent CPA, the total input VAT of ₱26,422,709.78 on importation of goods other than capital goods includes the amount of ₱11,478,271.00, as computed below, representing amortization of input taxes on importation of capital goods from the fourth quarter of 2006 to fourth quarter of 2007 which has been previously filed with this Court for refund or issuance of a tax credit certificate; thus, constitutes a double claim:[34]

Input taxes paid on importation of capital goods	
Fourth quarter of 2006	₱ 7,854,823.00
First quarter of 2007	13,522,917.00
Second quarter of 2007	13,329,442.00
Third quarter of 2007	12,541,436.00
Fourth quarter of 2007	10,142,737.00
Total	57,391,355.00
Five-year amortization period in months	60
Monthly amortization	956,522.58
No. of months in a year	12
Total	**₱11,478,271.00**

Accordingly, petitioner's recomputed input VAT claim on importations of goods other than capital goods for the first quarter of 2010 amounts to ₱14,944,438.78 (₱26,422,709.78 less ₱11,478,271.00).

In the Independent CPA Report, the recomputed input VAT of ₱14,944,438.78 on importations of goods other than capital goods and input VAT of ₱17,773,583.82 on domestic purchases of services are further broken as follows:

[34] Exhibit "D", No. 11 of the Findings, p. 4.

INPUT TAXES ON IMPORTATIONS OF GOODS	
Supported by original BCORs[35]/SSDTs[36]/BDAs[37]/BORs[38] and IEIRDs[39]	
Dated in the first quarter of 2010 (*Exhibits "G-1" to "G-37-a"*)	₱ 10,226,812.00
Out-of-period receipts:	
Dated in the third quarter of 2009 (*Exhibits "G-38" to "G-38-a"*)	193,897.00
Dated in the fourth quarter of 2009 (*Exhibits "G-39" to "G-51-a"*)	3,420,767.00
Supported by original BCORs only	
Dated in the first quarter of 2010 (*Exhibits "H-1" to "H-2"*)	4,308.00
Out-of-period receipts dated fourth quarter of 2009 (*Exhibits "H-3"*)	375.00
Supported by original IEIRDs only	
Dated in the first quarter of 2010 (*Exhibits "I-1" to "I-4"*)	447,689.00
Out-of-period receipts dated fourth quarter of 2009 (*Exhibits "I-5" to "I-8"*)	181,385.00
No supporting documents	469,205.78
Subtotal	**₱14,944,438.78**
INPUT TAXES ON PURCHASES OF SERVICES	
Original VAT official receipts that are in the name of the petitioner	
Dated in the first quarter of 2010 (*Exhibits "K-1" to "K-58"*)	₱ 17,571,663.32
Out-of-period receipts:	
Dated in the fourth quarter of 2009 (*Exhibits "K-59" to "K-90"*)	29,582.50
Dated in the second quarter of 2010 (*Exhibits "K-91" to "K-98"*)	126,116.42
No date indicated (*Exhibits "K-99"*)	41,078.40
No supporting documents	5,143.18
Subtotal	**₱17,773,583.82**
Total	**₱32,718,022.60**

Based on the Independent CPA's findings, petitioner's claim in the amount of ₱4,467,550.28 shall be disallowed for the reasons stated below:

	Importation of Goods	**Domestic Purchases of Services**	**Total**
Supported by original BCORs/SSDTs/BDAs/BORs and IEIRDs dated 3rd quarter of 2009	₱ 193,897.00	-	₱ 193,897.00
Supported by original BCORs/SSDTs/BDAs/BORs and IEIRDs dated 4th quarter of 2009	3,420,767.00	-	3,420,767.00
Supported by original BCORs dated 4th quarter of 2009	375.00	-	375.00
Supported by original IEIRDs dated 4th quarter of 2009	181,385.00	-	181,385.00
Supported by original VAT ORs dated 4th quarter of 2009	-	₱ 29,582.50	29,582.50
Supported by original VAT ORs dated 2nd quarter of 2010	-	126,116.42	126,116.42
Supported by original VAT ORs without indicated date	-	41,078.40	41,078.40
No supporting VAT official receipts		5,143.18	5,143,.18
No supporting documents	469,205.78	-	469,205.78
Total	**₱4,265,629.78**	**₱201,920.50**	**₱4,467,550.28**

[35] Bureau of Customs Official Receipts.
[36] Bank Statement of Settlement of Duties and Taxes.
[37] Bank Debit Advices.
[38] Bank Official Receipts.
[39] Import Entry and Internal Revenue Declarations.

Section 110(A)(1)(b) and (2)(b) of the NIRC of 1997, as amended, provides as follows:

> "SEC. 110. *Tax Credits.* -
>
> (A) *Creditable Input Tax.* -
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> (b) Purchase of services on which a value-added tax has actually been paid.
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> xxx xxx xxx
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs."

Relative thereto is Section 4.110-8 of RR No. 16-05, as amended, which reads as follows:

> "SECTION 4.110-8. *Substantiation of Input Tax Credits.* -
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.

xxx xxx xxx

> (4) For the purchase of services - official receipt showing the information required under Secs. 113 and 237 of the Tax Code."

It is clear from the above-quoted VAT law and regulations that the input tax on the importation of goods shall be creditable to the importer upon payment of the VAT prior to the release of the goods from the custody of the Bureau of Customs, that is, upon the issuance of the Bureau of Customs or bank official receipt. Likewise, the input tax on the purchase of services is creditable to the purchaser upon payment of the VAT on the services, that is, upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.

Therefore, it was indubitable on the part of petitioner to declare the input taxes on importation of goods and purchase of services in the taxable quarter when the payment for the VAT on the importation and purchase of services was made.

Consequently, the input taxes on petitioner's importation of goods in the amounts of ₱193,897.00, ₱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 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 petitioner'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, petitioner'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.

Moreover, petitioner'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. Below is the breakdown of the input VAT of ₱369,545.30:

Exhibit	Supplier's Name	Taxable Amount	Input VAT	Findings
K-8	Olympus Int'l Forwarding Corp.	19,458.00	2,334.96	VAT not separately indicated
K-9	Macnels Shipping (Phils) Inc.	3,921.58	470.59	VAT not separately indicated
K-17	McPhar Geoservices (Philippines) Inc.	228,800.00	27,456.00	VAT not separately indicated
K-18	McPhar Geoservices (Philippines) Inc.	899,920.00	107,990.40	VAT not separately indicated
K-24	Intertek Testing Services Phils. Inc.	36,980.75	4,437.69	VAT not separately indicated
K-25	Intertek Testing Services Phils. Inc.	492,957.92	59,154.95	VAT not separately indicated
K-26	Intertek Testing Services Phils. Inc.	212,688.33	25,522.60	VAT not separately indicated
K-27	Columbia Transport Inc.	1,800.00	216.00	VAT not separately indicated
K-28	Jemara Int'l Freight Services Inc.	8,400.00	1,008.00	VAT not separately indicated
K-29	Asst'n of Int'l Shipping Lines Inc.	290.17	34.82	VAT not separately indicated
K-33	DHL Express (Philippines) Corp.	1,026.17	123.14	VAT not separately indicated
K-36	Migallos Luna Law Offices	20,000.00	2,400.00	VAT not separately indicated
K-37	Olympus Int'l Forwarding Corp.	9,700.00	1,164.00	VAT not separately indicated
K-38	Sky Freight Forwarders Inc.	9,121.42	1,094.57	VAT not separately indicated
K-43	EDSA Shangrila	31,200.00	3,744.00	VAT not separately indicated
K-44	EDSA Shangrila	13,000.00	1,560.00	VAT not separately indicated
K-45	EDSA Shangrila	15,600.00	1,872.00	VAT not separately indicated
K-47	Intertek Testing Services Phils. Inc.	212,909.25	25,549.11	VAT not separately indicated
K-51	Philippine World Travel Inc.	7,942.92	953.15	VAT not separately indicated
K-52	Certeza Infosys Corporation	736,607.17	88,392.86	VAT not separately indicated
K-53	Sky Freight Forwarders Inc.	1,477.83	177.34	VAT not separately indicated
K-55	EDSA Shangrila	31,200.00	3,744.00	VAT not separately indicated
K-57	Intertek Testing Services Phils. Inc.	84,542.67	10,145.12	VAT not separately indicated
Total		**₱3,079,544.18**	**₱369,545.30**	

Therefore, out of petitioner's reported input VAT for the first quarter of 2010 in the amount of ₱44,196,293.60, only the amount of ₱27,880,927.02 represents petitioner's valid input tax for the first quarter of 2010, tabulated below:

	Input VAT on Importation	Input VAT on Domestic Purchases	Total
Input VAT Claim	₱ 26,422,709.78	₱ 17,773,583.82	₱ 44,196,293.60
Less: Disallowances			

1) Per ICPA's report: a) Amortization of input taxes on importation of capital goods which has been previously filed before this Court	₱ 11,478,271.00		₱ 11,478,271.00
b) Input taxes supported by BCORs/SSDTs/BDAs/BORs/ IEIRDs and VAT ORs dated outside the period of claim and input taxes without supporting documents/VAT ORs	4,265,629.78	₱ 201,920.50	4,467,550.28
2) Per this Court's further verification		369,545.30	369,545.30
Total Disallowances	**₱15,743,900.78**	**₱ 571,465.80**	**₱16,315,366.58**
Valid Input VAT	**₱10,678,809.00**	**₱17,202,118.02**	**₱27,880,927.02**

A portion, however, of the ₱27,880,927.02 input VAT shall be applied against petitioner's reported output VAT liability for the first quarter of 2010 in the amount of ₱3,214.29[40]. Consequently, only the remaining input VAT of ₱27,877,712.73 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱1,767,587,083.42 and only the input VAT of ₱27,740,113.10 is attributable to the valid zero-rated sales of ₱1,758,862,575.75, as computed below:

Valid Input VAT		₱ 27,880,927.02
Less: Output VAT		3,214.29
Excess Input VAT		₱ 27,877,712.73
Valid Zero-Rated Sales		₱ 1,758,862,575.75
Divided by Total Declared Zero-Rated Sales	÷	₱ 1,767,587,083.42
Multiplied by Excess Input VAT	×	27,877,712.73
Excess Input VAT Attributable to Valid Zero-Rated Sales		**₱ 27,740,113.10**

Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[41] from the second quarter of 2010 to the fourth quarter of 2011, the same remained unutilized until it was deducted in its Quarterly VAT Return for the fourth quarter of 2011, as "VAT Refund/TCC claimed"[42] from the total available input tax of ₱327,550,279.99[43]. Therefore, the claimed input taxes for the first quarter of 2010 could not have been carried over or utilized in the succeeding first quarter of 2012.

[40] Exhibit "M-1(1/2)" and Petition for Review, Annex "B-1", line 19B.
[41] Exhibits "M-2" to "M-8".
[42] Exhibit "M-8(1/2)", line 23D.
[43] Exhibit "M-8(1/2)", line 22.

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 of ₱27,740,113.10, representing its unutilized and excess input VAT attributable to its zero-rated sales for the first quarter of 2010.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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