Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1371** (CTA Case No. 8600)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
	Promulgated:
PHILEX MINING CORPORATION, Respondent.	AUG 15 2017 3:10 p.m.

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RESOLUTION

CASANOVA, *J.*:

Before *Us* is petitioner's **Motion for Reconsideration (Decision of 11 April 2017)**[1], filed on May 10, 2017, with respondent's **Opposition/Comment (Motion for Reconsideration) Decision of 11 April 2017**[2], filed on July 3, 2017.

On April 11, 2017, the Court *En Banc* promulgated a Decision[3] upholding the findings of the court *a quo* in partially granting herein respondent's claim for refund of its unutilized input Value Added Tax

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[1] CTA *En Banc* Rollo, pp. 103-116
[2] *Ibid.*, pp. 120-127
[3] *Id.*, pp. 91-102

(VAT) from zero-rated transactions in the reduced amount of ₱18,974,066.49. The dispositive portion of the Decision reads as follow:

> "**WHEREFORE,** the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated May 14, 2015 and Resolution dated October 8, 2015, rendered respectively, in CTA Case No. 8600, are both **AFFIRMED.**
>
> **SO ORDERED.**"

In his Motion, petitioner Commissioner of Internal Revenue (CIR) prays that the above Decision be reversed and the Petition for Review docketed as CTA Case No. 8600 be dismissed. Petitioner claims that the said Petition was prematurely filed and that it failed to comply with the accounting requirements mandated by Revenue Regulations No. 16-2005[4], in relation to Sections 113 (C)[5] and 114 (A)[6] of the National Internal Revenue Code (NIRC) of 1997, as amended.

On the other hand, respondent Philex Mining Corporation stresses that the grounds and arguments raised in petitioner's Motion are the same issues already resolved and passed upon by the Court in Division as well as the Court *En Banc*. Respondent claims that since no new matters are raised in the instant Motion, there exists no reason to reconsider the Decision as assailed by petitioner.

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[4] CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005, dated September 1, 2005

[5] "**SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —**

x x x

(C) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance."

[6] "**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 (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."

After due consideration, *We* find no merit in the instant Motion.

Verily, in questioning the timeliness of respondent's judicial claim, petitioner cited the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[7] *("Aichi case")*, wherein the Supreme Court held that unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made. Following the premise, petitioner advanced the arguments that 1) the two-year prescriptive period applies to both administrative and judicial claim; and, 2) the thirty (30) day rule under Section 112 (C)[8] of the NIRC of 1997, as amended, within which a taxpayer may appeal its claim to the Court of Tax Appeals (CTA) is not applicable in the present case since there is yet no decision of the CIR that will serve as the reckoning point of the thirty-day period.

Unfortunately, petitioner's arguments are misplaced.

In the more recent case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[9], the Supreme Court clarified the ruling in the *Aichi case*, to wit:

> "In Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi), we dispelled the misconception that both the administrative and judicial claims must be filed within the two-year prescriptive period:
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> > There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person,

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[7] G.R. No. 184823, October 6, 2010

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

x x x

(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."

9 G.R. No. 191498, January 15, 2014

> whose sales are zero-rated or effectively zero-rated may, within two 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.' The phrase 'within two (2) years x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.
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> In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

The message of Aichi is clear: it is only the administrative claim that must be filed within the two-year prescriptive period; the judicial claim need not fall within the two-year prescriptive period." *(Citations omitted)*

As to the reckoning of the thirty-day rule under Section 112 (C) of the NIRC of 1997, as amended, the same was already settled by the High Court as follows:

"The 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well. This is the correct interpretation of the law, as held in San Roque:

> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
>
> x x x 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.
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> This law is clear, plain, and unequivocal. Following the well-settled verba legis doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.
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> The San Roque pronouncement is clear. The taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period."[10] *(Citations omitted)*

As to petitioner's assertion that respondent failed to comply with the accounting requirements under RR No. 16-2005 in relation to Sections 113 (C) and 114 (A) of the NIRC of 1997, as amended, again, *We* reiterate that since Sec. 4.113-3[11] of RR No. 16-2005 and Section 113

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[10] *Ibid.*

[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."

(C) of the NIRC of 1997, as amended, both contain the phrase "Notwithstanding the provisions of Section 233", reference to the said Section should be read in conformity with the foregoing provisions. Under Section 233[12] of the NIRC of 1997, as amended, maintaining subsidiary journals are not mandatory but rather an optional requirement. Henceforth, respondent's failure to maintain a subsidiary sales journal and subsidiary purchase journal is not a condition *sine qua non* in claiming unutilized zero-rated input VAT.

To re-emphasize, *Our* ruling has been consistent on the matter. In the case of *Commissioner of Internal Revenue vs. Philex Mining Corporation*[13], *We* ruled that:

> "Proceeding from the above-discussion, petitioner asserts that respondent failed to comply with the requirements of Sections 4.113-1 and 4.113-3 of Revenue Regulations (RR) No. 16-2005, in relation to Revenue Memorandum Circular (RMC) No. 62-2005 regarding invoicing and accounting requirements, *i.e.*, maintenance of subsidiary sales journal and subsidiary purchase journal. Likewise, petitioner avers that respondent failed to prove with certainty that it complied with the requirements of Section 114 (A) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended) and Section 4.114-1 of RR No. 16-2005 regarding the filing and payment of the monthly VAT declarations of large and non-large taxpayers.
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> *x x x*
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> Under the afore-quoted provisions of the law, all persons subject to VAT are required to maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. Moreover, VAT-registered persons shall likewise pay VAT on a monthly basis.

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[12] "**SEC. 233. Subsidiary Books.** — All corporations, companies, partnerships or persons keeping the books of accounts mentioned in the preceding Section **may, at their option, keep subsidiary books as the needs of their business may require**: Provided, That were such subsidiaries are kept, they shall form part of the accounting system of the taxpayer and shall be subject to the same rules and regulations as to their keeping, translation, production and inspection as are applicable to the journal and the ledger." *(Emphasis Ours)*
[13] CTA EB No. 1168 (CTA Case No. 8371), June 19, 2015

While it is conceded that the mandatory requirements set forth under Section 113 (C) and Section 114 (A) of the NIRC of 1997, as amended, should be complied with, it is equally important to consider the doctrine laid down under the First Express Pawnshop Company, Inc. case that it is the taxpayer who has the leeway to determine what type of relevant supporting documents it shall present for the successful prosecution of its claim.

As aptly found by the Court in Division, respondent was able to prove by its relevant supporting documents that it is entitled to its claim for refund. **Whether respondent maintains a subsidiary sales journal and subsidiary purchase journal does not affect respondent's claim for refund, because it is not one of the requisites for respondent to be entitled thereto. Nonetheless, non-compliance with the foregoing may be the subject of a separate and independent cause of action by petitioner.**

Similarly, respondent was able to prove before the Court in Division that it paid its VAT liabilities. **Failure to timely pay VAT on a monthly basis may give rise to the payment of penalties under the NIRC of 1997, as amended, but it does not affect respondent's entitlement to its claim for refund because it has sufficiently shown that it has in fact been paid.**" *(Citations omitted and emphasis Ours)*

WHEREFORE, the Motion for Reconsideration (Decision of 11 April 2017) is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice