REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	C.T.A. CASE NO. 7495
	Members:
- versus -	CASTAÑEDA, JR., *Chairperson* UY, *and* PALANCA-ENRIQUEZ, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 09 2009 4:07 p.m.

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DECISION

UY, *J.*:

This is a Petition for Review filed by petitioner Philex Mining Corporation seeking refund of the amount of **FOURTEEN MILLION FOUR HUNDRED SEVENTY-NINE THOUSAND FIVE HUNDRED NINETY-FIVE PESOS AND 41/100** (PHP14,479,595.41), representing excess input value-added tax (VAT) on petitioner's alleged purchases of goods and services attributable to zero-rated sales of mine products for the second quarter of taxable year 2004.

THE FACTS

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

Respondent, on the other hand, is the government official charged with the administration and enforcement of the 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) of 1997. He holds office at BIR National Office, Diliman, Quezon City.

Admittedly, petitioner sold part of its copper concentrates production to Philippine Associated Smelting and Refining Corporation (PASAR), which is a Philippine Economic Zone Authority (PEZA)-registered enterprise.[3] It also exported gold and copper concentrates to foreign buyers during the subject period.[4] On April 23, 2004, petitioner filed its Second Quarterly VAT Return for the taxable year 2004, which was amended on February 21, 2005, reflecting the following details: total zero-rated sales of Php939,237,698.67, domestic purchases of goods of Php282,374.10 with input tax of

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[1] Par. 1, Summary of Facts Admitted, Stipulation of Facts and Issues, Docket, p. 35.
[2] Par. 2, Summary of Facts Admitted, Stipulation of Facts and Issues, Docket, p. 35. Date of Application for Zero-Rated should be 1988 as indicated in Annex "A-2" of Petition for Review, p. 8.
[3] Par. 10, Summary of Facts Admitted, Stipulation of Facts and Issues, Docket, p. 37.
[4] Par. 12, Summary of Facts Admitted, Stipulation of Facts and Issues, Docket, p. 37.

Php28,237.41, importation of goods of Php144,513.580.00 with input tax of Php14,451,358.00.[5]

Claiming to be entitled to the refund of the alleged excess input tax of P14,479,595.41 for the second quarter of 2004, petitioner filed on October 19, 2005 an Application for Tax Credit / Refund of VAT Paid (BIR Form 2552) for the second quarter period from April 1 to June 30, 2004. It also filed a claim for refund/tax credit certificate with the One Stop Shop Center of the Department of Finance on November 25, 2005, pursuant to Section 4.106-2 and Revenue Regulations No. 7-95, in relation to Section 112 of the NIRC of 1997.[6]

As respondent has not acted on petitioner's claim, the latter filed the instant Petition for Review on June 29, 2006, pursuant to Sections 112(D) and 229 of the NIRC of 1997.

On July 31, 2006, respondent filed responsive pleading by way of an Answer interposing the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
>
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 8. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."[7]

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[5] Par. 4, Summary of Facts Admitted, Stipulation of Facts and Issues, Docket, p. 36.
[6] Pars. 6 and 7, Summary of Facts Admitted, Stipulation of Facts and Issues, Docket, p. 36.
[7] Answer, Docket, p. 22 – 24.

During trial, petitioner presented documentary and testimonial evidence in support of its claim, while respondent's counsel manifested during the hearing held on December 10, 2007 that he is not presenting evidence relative to the instant case[8]. Thus, the Court directed the parties to file their respective Memorandum. Petitioner submitted its Memorandum on January 31, 2008 while respondent failed to do so. Thereafter, the instant case was deemed submitted for decision in the Resolution dated February 18, 2008[9].

Hence, this Decision.

THE ISSUES

The issues jointly stipulated by the parties are as follows:

> "1. Whether or not petitioner's domestic purchases and importations of goods which are attributable to its export sales for the second quarter of 2004 are duly supported by documentary evidence;
>
> 2. Whether or not the accumulated or excess input VAT was not unutilized or applied by petitioner against output VAT in the second quarter of 2004 or in the succeeding quarters or taxable years;
>
> 3. Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
>
> 4. Whether or not petitioner is entitled to refund of the excess input taxes in the total amount of P14,479,595.41 for the second quarter of 2004 paid for the purchase of capital goods and/or non-capital goods and services due to petitioner being a producer and exporter of mineral products."[10]

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[8] Minutes, Hearing held on December 10, 2007, Docket, p. 158.
[9] Docket, p. 186.
[10] Statement of the Issues, Stipulation of Facts and Issues, Docket, pp. 37-38.

The foregoing stipulated issues are inter-related and boil down to one central issue: whether or not petitioner is entitled to its refund claim in the amount of P14,479,595.41, representing its alleged excess input taxes for the second quarter of 2004. Thus, We shall discuss all the foregoing stipulated issues jointly.

THE COURT'S RULING

In claims for refund of input taxes attributable to zero-rated or effectively zero-rated sales, the general legal provision thereon is Section 112(A) of the NIRC of 1997,as amended, which provides as follows:

> "**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 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."

Based on the afore-quoted provision, to be entitled to a refund or issuance of a tax credit certificate of its unutilized input VAT, the following requisites must be satisfied by the claimant-taxpayer:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;

3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for the refund was filed within the two-year prescriptive period.

With respect to the first requisite, petitioner claims that: its direct export of copper concentrates to Pan Pacific Copper Co. of Tokyo, Japan are VAT zero-rated, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997; its sales of copper concentrates to PASAR, a PEZA-registered enterprise, are subject to zero percent (0%) VAT, citing as legal bases Section 106(A)(2)(a)(5) of the NIRC of 1997, Section 23 of Republic Act (RA) No. 7916[11], Article 77(2) of the Omnibus Investments Code, Revenue Memorandum Circular (RMC) No. 74-99[12], and VAT Review Committee Ruling No. 026-2001.

As correctly pointed out by petitioner, its direct exports of copper concentrates to Japan, may fall within those transactions referred to as subject to zero percent (0%) VAT specified under 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
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> xxx xxx xxx

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[11] The Special Economic Zone Act of 1995.
[12] "Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE".

(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)."

It must be remembered however, that Section 106(A)(2)(a)(1) of the NIRC of 1997 should be read in conjunction with Section 113 of the same Code, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, which requires a VAT-registered person like petitioner, to issue an invoice or receipt for every sale transaction containing the following information:

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

(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(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."

"**SECTION 4.108-1. *Invoicing Requirements*** – All VAT registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

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Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

If the taxable person is engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Section 100 and 102 of the Code."

Additionally, such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, to wit:

"**SEC. 237.** ***Issuance of Receipts or Sales or Commercial Invoices.*** - All persons subject to an internal revenue tax shall, for each sale or 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"

> "**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.
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> xxx xxx xxx"

In the light of the foregoing provisions, it is clear that any person claiming VAT zero-rated direct export sales must present at least three documents, to wit:

a) the sales invoice as proof of sale of goods;

b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country, and

c) 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.

Furthermore, the sales invoices supporting the export sales must comply with the invoicing requirements provided under Section 112 (A) of the NIRC of 1997 and Section 4.108-1 of Revenue Regulation No. 7-95. Thus, only export sales supported by these documents may qualify for VAT zero-rating under Sec. 106 (A)(2)(a)(1) of the NIRC of 1997.

During the presentation of petitioner's evidence, the Court-commissioned Independent Certified Public Accountant (ICPA), Albert G. Alba, testified that in his Report dated January 4, 2007,[13] he stated that petitioner declared in its Amended VAT Return[14] for the Second (2nd) Quarter of 2004 that it had zero-rated export sales amounting to US$16,831,009.00 with peso value equivalent of Php939,237,698.67, with the following particulars:

Particulars	Amount
Current Quarter's Shipments:	
Direct export of copper to Japan	US$ 9,694,533.00
Indirect Exports of copper to PASAR	7,414,752.00
	US$17,109,285.00
Previous Quarters' Shipments	
Adjustment to correct previous billings	(278,276.00)
Total Zero-Rated Sales	**US$16,831,009.00**

Further, he identified all examined documents pertinent to petitioner's claim, to wit: sales invoice[15], export declarations[16], bills of lading/airway bills[17], bank certifications[18], and entries in petitioner's passbooks[19] in local banks relative to the payments received for purposes of substantiating petitioner's export sales for the second quarter of taxable year 2004, and the fact that foreign currency proceeds thereof were duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

[13] Exhibit "E".
[14] Exhibit "J-10".
[15] Exhibits "F-1", Final Invoice No. PX 2402 dated October 4, 20041, Exhibit" F-2" – Final Invoice No. PX 2406 dated November 2, 2004 both issued by Philex Mining Corporation to Pan Pacific Copper Co., Ltd.
[16] Exhibits "F-1-a" to "F-2-a".
[17] Exhibits "F-1-b" to "F-7-b".
[18] Exhibits "G-1" to "G-4".
[19] Exhibits "G-1-a" to "G-4-e".

Per petitioner's Summary of Sales and Remittances[20], it is indicated that the invoices corresponding to the export sales in the amount of US$9,694,533.00 are reflected in two sales invoices bearing Invoice No. 2402 and 2406, with gross sales in the amount of US$4,749,732.00 and US$4,944,801.00, respectively.

A scrutiny of these 2 sales invoices marked as Exhibits "F-1" and "F-2"[21] supporting petitioner's direct export sales of copper to Japan actually reflects the gross sales in the amount of US$4,697,220.15 and US$4,725,473.62, respectively. More importantly, Invoice No. 2402[22] and Invoice No. 2406[23] are accordingly dated October 4, 2004 and November 2, 2004 thus, pertain to the fourth quarter of 2004 and evidently fall outside the period being claimed in the instant Petition, and therefore, cannot be considered to facilitate the subject refund.

Anent petitioner's indirect export sales to PASAR in the amount of US$7,414,752.00, the provisions of Section 106(A)(2)(a)(5) of the NIRC of 1997, in relation to Articles 23 and 77(2) of the Omnibus Investments Code, and as clarified under RMC No. 74-99, are applicable.

Section 106(A)(2)(a)(5) is quoted hereunder for ready reference, to wit:

> "**SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —**
>
> (A) Rate and Base of Tax. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value added tax equivalent to ten percent

[20] Exhibit "G".
[21] Exhibits "F-1" to "F-2".
[22] Exhibit "F-1".
[23] Exhibit "F-2".

(10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term '*export sales*' means:

(5) Those considered export sales under **Executive Order No. 226**, otherwise known as the Omnibus Investment Code of 1987, and other special laws." (*Emphasis supplied*)

Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 provides in part, thus:

"ARTICLE 23. 'Export Sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents: *Provided, further*, That without actual exportation the following shall be considered 'constructively exported' for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones**; . . ." (*Emphasis supplied*)

"ARTICLE 77. *Tax Treatment of Merchandise in the Zone.* — (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction." (*Emphasis supplied*)

Lastly, RMC 74-99 provides that:

"SECTION 3. *Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise.-*

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3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. **Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5) , NIRC, in relation to Art. 77(2) of the Omnibus Investments Code**, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular." (*Emphasis supplied*)

Based on the foregoing provisions, indirect exports made by a VAT taxpayer, like herein petitioner, to a PEZA-registered entity, are legally entitled to zero percent (0%) VAT. Nevertheless however, petitioner must substantiate its indirect exports to PASAR by proper VAT sales invoices.

A careful look at the Sales Invoices marked as Exhibits "F3 to F7"[24] presented by petitioner, show that these are dated within the month of July and August of 2004, and covers petitioner's supposed indirect exports to PASAR in the amount of US$7,414,752.00, likewise fall outside the subject period of claim, the second quarter of taxable year 2004. Thus, petitioner's reported indirect export sales to PASAR in the amount of US$7,414,752.00 cannot qualify for VAT zero-rating.

In sum, petitioner's claimed input VAT in the total amount of Php14,479,595.41 attributable to zero-rated sales can not be refunded considering that petitioner's reported direct and indirect export sales in the amount of Php939,237,698.67 with US dollar equivalent of US$16,831,009.00 failed to qualify for VAT zero-rating having been transacted outside the period of subject claim.

We now resolve petitioner's assertion that should it not be entitled to the amount of Php14,479,595.41, representing input VAT attributable to zero-rated sales, it is still entitled to the reduced amount of Php10,420,574.00[25] attributable to importation of capital goods, pursuant to Section 112(B) of the

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[24] Exhibits "F-3" –Final Invoice No. PX-2392 dated July 29, 2004; Exhibit "F-4" - Final Invoice No. 2394 dated August 5,2004; Exhibit "F-5" – Final Invoice No. 2395 dated August 5, 2005; Exhibit "F-6"– Final Invoice No. 2395 dated August 5, 2004; Exhibit "F-7" – Final Invoice No. 2396 dated August 5, 2004, all issued by Philex Mining Corporation to Philippine Associated Smelting and Refining Corporation of PASAR.
[25] Docket p. 167.

NIRC of 1997, and as implemented by Section 4.106-1 of Revenue Regulations No. 7-95.

We again find petitioner's contention bereft of merit.

The legal provisions pertaining to claims for refund of input taxes paid on capital goods, imported or locally purchased, are : Section 112(B) of the NIRC of 1997, in relation to Section 4.106-1(b) of Revenue Regulation No. 7-95, which are hereunder quoted for easy reference, thus:

> "**SEC. 112. Refunds or Tax Credits of Input Tax.** —
>
> xxx xxx xxx
>
> **(B) Capital Goods.** – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."
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> "**SECTION 4.106-1.** ***Refunds or tax credits of input tax.*** -
>
> **(b) Capital Goods** – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations.
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> *"Capital goods or properties" refer to goods or properties with an estimated useful life of greater than one year and which are treated as depreciable assets under Section 29(f), used*

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directly or indirectly in the production or sale of taxable goods or services."

Applying the aforesaid provisions in the case at bench, in order that subject purchases may be classified as "***capital goods or properties***", the following conditions must be present :

a) that the goods or properties must have estimated useful life of more than one year;
b) they are treated as depreciable assets under Section 29(f); and
c) they are used directly or indirectly in the production or sale of taxable goods or services.

During trial, petitioner presented and offered in evidence various Bureau of Customs Official Receipts and Bank Debit Advices[26] and Import Entry and Internal Revenue Declarations[27], as well as the Report of the ICPA[28] to support its subject claim for refund. A thorough examination of these documents however reveals that petitioner failed to show that indeed, its subject importations and purchases pertain to capital goods. Although other items included in the Summary of Input Taxes on Importations[29] may be classified as depreciable assets with estimated useful life of more than one year; however, petitioner was not able to present pertinent documents, such as detailed general ledgers and audited financial statements, to prove that the said items were capitalized in the books of accounts and subjected to depreciation.

[26] Exhibits "H-1" to "H-9".
[27] Exhibits "H-1-a" to "H-9-a".
[28] Exhibit "E".
[29] Exhibit "H".

In other words, petitioner failed to establish that the subject importations related to the input VAT payments of P10,420,574.00 fall within the prescribed definition of capital goods. Consequently, the alleged input VAT payments of P10,420,574.00 for the second quarter of 2004 cannot be refunded because petitioner failed to show, by way of competent evidence, that its importations fall within the definition of capital goods under Section 4.106-1(b) of Revenue Regulations No. 7-95.

All the foregoing considered, the Court finds and so holds, that petitioner failed to properly substantiate its alleged zero-rated and effectively zero-rated sales to entitle it to its subject claim for refund or issuance of tax credit certificate. Likewise, petitioner failed to properly establish that the goods that it imported and purchased were capitalized in its books of accounts and subjected to depreciation. Thus, its refund claim cannot be granted.

WHEREFORE, the instant petition for review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice