REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 7933 & 7968

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAR 2 5 2015 2:25 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of this Court is respondent's **Motion for Partial Reconsideration** filed on February 5, 2015, with petitioner's **Comment** filed on February 26, 2015.

Respondent prays for the reversal of the Amended Decision promulgated on January 21, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund be issued in favor of Philex Mining Corporation in the amount of ₱7,194,587.11, representing its unutilized excess input VAT attributable to its zero-rated sales for the second and third quarters of 2007.

SO ORDERED."

In the Motion for Partial Reconsideration, respondent raises the following grounds:

1. Petitioner failed to comply with the third requisite of Revenue Regulations (RR) No. 16-2005, *i.e.* the non-submission of bank credit advice, certificate of bank remittance, or any other document evidencing payment for the goods in acceptable foreign currency or its equivalent in goods and services, in order for it to claim VAT zero-rated direct export sales; and

2. The Honorable Court erred when it partially granted petitioner's claim for tax refund/credit of alleged unutilized input VAT for the second and third quarters of 2007.

Respondent then discusses the conditions and requirements that a taxpayer must satisfy, pursuant to Item III Revenue Memorandum Circular (RMC) No. 29-2009, to be granted a refund or to be issued a tax credit certificate (TCC) for creditable input taxes.

On the other hand, petitioner claims that it had in fact presented and submitted as evidence the certificate of inward remittances issued by local banks through which the remittance of the net foreign exchange proceeds of petitioner's export sales of its mineral products were coursed (Exhibits "F', "F-1" to "F-11"), and pages of the bank passbooks showing the crediting of the net foreign exchange remittances to the bank accounts of petitioner in local banks (Exhibits "F-1-a" to "F-11-a"). According to petitioner, these prove that export sales were paid in US dollars, an acceptable foreign currency, and accounted for in accordance with BSP rules.

Petitioner maintains that by requiring it to submit documents to substantiate its alleged receivables, repayment of loan payables, and bank charges, so that its export sales can qualify as zero-rated, is tantamount to the imposition of an additional condition without any legal basis. It further argues that RMC No. 29-2009 does not have the force and effect of a law (unlike a revenue regulation), and therefore it is not binding on a court of law such as the CTA. There was even no allegation of non-compliance with the said RMC. Jr

After due consideration, the Court finds no merit in respondent's Motion for Partial Reconsideration.

A perusal of the grounds relied upon in respondent's Motion for Partial Reconsideration readily reveals that the first issue and argument had already been sufficiently passed upon and adequately discussed in the assailed Amended Decision dated January 21, 2015.

In the assailed Amended Decision, the Court has ruled that the evidence submitted therein, particularly the certificate of inward remittances (Exhibit "F', "F-1" to "F-10") and pages of the bank passbooks (Exhibits "F-1-a" to "F-11-a"), were sufficient to satisfy the third requisite of Revenue Regulations (RR) No. 16-2005.

Moreover, the Court found that the remittances covered by the bank certifications and its corresponding entries in the passbooks actually pertain to zero-rated sales of petitioner for the period covered by its claim. These were supported by the bank certifications submitted in relation to the Provisional/Final Sales Invoices, as summarized in the Schedule of Sales and Remittances in the Independent CPA Report. The court explained:

> "Based on the Schedule of Sales and Remittances together with the foregoing explanation of petitioner, ninety percent (90%) of the export sales per Provisional Invoices for the second and third quarters of 2007 shipments, after deducting the alleged treatment charges, corresponds to the inward remittances received by petitioner."[1]

On the second argument, respondent, by enumerating the requirements to process claims for tax refunds/tax credit certificates (TCC) in the administrative level with the CIR, implies that petitioner failed to submit the necessary documents and comply with the requisites provided therein.

However, it can be gleaned from the facts of the case that during the period that petitioner filed its administrative claim through the One Stop Shop Center of the Department of Finance, at no instance was petitioner notified of the alleged incomplete submission

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[1] Amended Decision dated January 21, 2015.

of documents or failure to comply with any other requirements. Should there be failure on the part of petitioner to do so, the CIR should have informed petitioner as directed by RMC No. 29-2009. In fact, respondent even admitted the proper and timely filing of both the administrative and judicial claims as stated in the Stipulation of Facts and Issues[2] jointly entered into by both parties.

Even assuming there were documents which petitioner failed to submit in its administrative claim, the CTA may still admit such evidence and rule on the matter. In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*,[3] the Supreme Court opined:

> "More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated *de novo.* Thus, respondent should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim."

Therefore, the Supreme Court has concluded that once the taxpayer has established by sufficient evidence that it is entitled to a refund or issuance of a tax credit certificate, in accordance with the requirements of the law, its claim should be granted.[4] In this case, the Court is convinced that the petitioner proved its claim for refund of its unutilized excess input taxes.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[2] Docket, p. 66.
[3] G.R. No. 180290, September 29, 2014.
[4] *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*, G.R. 205055, July 18, 2014.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Wellness Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice