REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8424

Members:

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

Promulgated:

NOV 12 2013
4:29 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

This is a Petition for Review filed by petitioner, Philex Mining Corporation, to appeal the inaction of respondent, Commissioner of Internal Revenue, over petitioner's administrative claim for refund in the amount of P27,115,507.10, allegedly representing its excess and unutilized input value-added tax (VAT) on its importation of goods and domestic purchases of services attributable to zero-rated sales for the fourth quarter of taxable year 2009.

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.[1] It is VAT-registered with VAT Registration

[1] Par. 1, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), docket, p. 56.

Certificate No. 35-6-000731 effective October 29, 1987[2], and under Bureau of Internal Revenue (BIR) Form No. 2303 as of January 31, 1997. Petitioner likewise had its Application for Zero-Rate, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95, approved effective April 12, 1998.[3]

Respondent is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code. She holds office at the BIR National Office Building, Diliman, Quezon City.

On January 21, 2010[4], petitioner filed its original Quarterly VAT Return for the fourth quarter of 2009. Subsequently, petitioner filed an amended Quarterly VAT Return on September 13, 2011, which reflected total zero-rated sales of P2,680,497,020.60[5], importation of goods of P93,018,475.00 with input tax of P11,162,217.00, and purchases of services of P132,944,084.17 with input tax of P15,953,290.10.[6]

Pursuant to Section 4.112-1 of Revenue Regulations (RR) No. 16-2005, petitioner filed its claim for refund/tax credit with the One Stop Shop (OSS) Center of the Department of Finance per Claim Information Sheet No. 49813 in the amount of P27,115,507.10 on September 28, 2011.[7]

Respondent failed to act on petitioner's administrative claim for refund, prompting petitioner to file the instant Petition for Review on February 3, 2012.

In her Answer[8] filed on March 30, 2012, respondent alleged the following Special and Affirmative Defenses:

> "6. Petitioner's claim for issuance of tax credit certificate is subject to administrative investigation/examination by the Respondent's Bureau;

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[2] Annex "A", Petition for Review, docket, p. 11.
[3] Par. 3, Summary of Facts Admitted, SFI, docket, p. 57.
[4] Erroneously written as "January 21, 2009" in the SFI, docket, p. 57. See Annex "B" of Petition for Review, docket, p. 14.
[5] Erroneously written as "P2,680,497,420.60" in the SFI, docket, p. 57. See Exhibit "N-1".
[6] Par. 4, Summary of Facts Admitted, SFI, docket, p. 57.
[7] Par. 5, Summary of Facts Admitted, SFI, docket, p. 57.
[8] Docket, pp. 26-29.

7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

8. It is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, particularly Sections 112, 113, and 114 to validly claim for tax a [sic] credit/refund;

9. Taxpayer must establish by sufficient and competent evidence that it is entitled to a tax refund/credit;

10. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;

11. The Petitioner should prove its legal basis for claiming the amount to be refunded."

On April 2, 2012, the Court issued a Notice of Pre-Trial Conference[9] requiring both parties and their counsels to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs. In compliance therewith, petitioner submitted its Pre-Trial Brief[10] on May 3, 2012 while respondent filed her Pre-Trial Brief[11] on June 4, 2012.

As ordered by the Court, the parties submitted their Stipulation of Facts and Issues[12] on June 15, 2012.

On July 2, 2012, this Court issued the Pre-Trial Order[13], summarizing the facts and issue stipulated by the parties, the evidence to be presented by the parties and the hearing dates, and stating that the pre-trial is deemed terminated.

During trial, petitioner presented testimonies of its witnesses and formally offered its documentary evidence marked as Exhibits "A" to "Q", inclusive of sub-markings.[14] In

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[9] Docket, p. 30.
[10] Docket, pp. 35-39.
[11] Docket, pp. 44-47.
[12] Docket, pp. 56-59.
[13] Docket, pp. 73-77.
[14] Docket, pp. 237-241.

a Resolution[15] promulgated on May 15, 2013, this Court admitted Exhibits "A" to "L-78" and "N-1" to "Q-1".

During the hearing on June 17, 2013[16], counsel for respondent manifested that this case has no report of investigation 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 31, 2013,[17] taking into consideration petitioner's Memorandum[18] filed on July 5, 2013 and respondent's Memorandum[19] filed on July 29, 2013.

On August 22, 2013, petitioner filed a Motion for Leave to File a Rejoinder to Respondent's Memorandum with attached Rejoinder (To Respondent's Memorandum). In the Resolution dated August 30, 2013, the Court granted said motion and accordingly admitted petitioner's rejoinder.

ISSUES

The parties jointly stipulated and submitted to the Court for resolution the following issue[20]:

> "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 ₱27,115,507.10 for the 4th quarter of 2009 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:

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[15] Docket, pp. 246-247.
[16] Minutes of the hearing dated June 17, 2013, docket, p. 248.
[17] Docket, p. 273.
[18] Docket, pp. 249-263.
[19] Docket, pp. 266-272.
[20] Statement of the Issues, SFI, docket, p. 58.

> "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: *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 fourth quarter of 2009, which closed on December 31, 2009. Counting two years from this date, petitioner had until December 31, 2011 within which to file its administrative claim for refund. Clearly, petitioner's administrative claim for refund filed on September 28, 2011, with the OSS Center of the Department of Finance under Claim Information Sheet No. 49813[21] 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

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[21] Exhibit "O"; Par. 5, Summary of Facts Admitted, SFI, docket, p. 57.

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:

Year 2009	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
4th Quarter	September 28, 2011	January 26, 2012	February 25, 2012	February 3, 2012

Evidently, petitioner timely filed its appeal by way of a Petition for Review on February 3, 2012, as the same was filed well within the 30-day period after the 120-day period ended on January 26, 2012.

In her Memorandum, respondent contends that petitioner failed to present evidence showing that it submitted with the OSS Center of the Department of Finance the complete documents in support of its claim for refund. Consequently, petitioner's judicial claim for refund was prematurely filed.

However, contrary to respondent's contention, petitioner attached, as Annex "A" to its Rejoinder (To Respondent's Memorandum), a copy of a petitioner's letter addressed to the OSS Center dated September 6, 2011 enumerating therein the documents submitted in support of its claim for refund. Moreover, the same letter can be found in the BIR Records[22] submitted to this Court.

Anent the first requisite, for the fourth quarter of 2009, petitioner duly filed with the BIR its Amended Quarterly VAT Return[23] for the fourth quarter of 2009, declaring the following:

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[22] BIR Records, pp. 134-135.
[23] Exhibit "N-1".

Vatable Sales/Receipt	₱ 7,751,732.00
Zero Rated Sales/Receipts	2,680,497,020.60
Total Sales/Receipts	₱ 2,688,248,752.60
Output Tax Due	₱ 930,207.84
Less: Allowable Input Tax	
Input Tax Carried Over from Previous Period	₱ 194,248,781.11
Current Transactions	
Importations of Goods Other than Capital Goods	11,162,217.00
Domestic Purchase of Services	15,953,290.10
Total Available Input Tax	₱ 221,364,288.21
Less: VAT Refund/TCC Claimed	12,887,505.59
Total Allowable Input Tax	₱ 208,476,782.62
Tax Overpayment	**₱ 207,546,574.78**

The Court-commissioned Independent CPA (ICPA), Ms. Ma. Milagros F. Padernal of Uy, Singson, Abella & Co. (USA & Co.), noted in her Final Report dated January 15, 2013, that petitioner's zero-rated sales has a US dollar value of 57,681,056.00,[24] consisting of the following:[25]

Provisional billings for direct export sales of copper:		
Pan Pacific Copper Co., LTD.		US$ 57,254,096.00
Adjustments to previous quarters' provisional billings:		
Pan Pacific Copper Co., LTD.	US$ 485,955.00	
Louis Dreyfus Commodities Metals Suisse	(58,995.00)	426,960.00
Total		**US$ 57,681,056.00**

Per petitioner's Schedule of Export Sales[26], the amount of US$57,681,056.00 is broken down as follows:

Provisional Invoice No.	**Exhibit**	**Final Invoice**	**Exhibit**	**Consignee**	**Amount Recorded in the General Ledger for the Current Quarter**
Current Quarter's Shipments of Copper					
PX - 2577	F-1-b	PX - 2582	F-1-c	Pan-Pacific Copper Co., Ltd.	19,244,240.00
PX - 2578	F-2-b	PX - 2585	F-2-c	Pan-Pacific Copper Co., Ltd.	18,215,845.00
PX - 2581	F-3-b	PX - 2588	F-3-c	Pan-Pacific Copper Co., Ltd.	19,794,011.00
Subtotal					57,254,096.00

[24] Exhibit "D", No. 5 of the Findings, p.2.
[25] Exhibit "D", No. 2 of the Findings, p. 2.
[26] Exhibit "F".

Catch-up Adjustments to Prior Quarter's Shipments					
PX - 2559	F-4-b	PX - 2574	F-4-c	Louis Dreyfus Commodities Metals Suisse	(58,995.00)
PX - 2569	F-5-b	PX - 2575	F-5-c	Pan-Pacific Copper Co., Ltd.	(184,018.00)
PX - 2570	F-6-b	PX - 2576	F-6-c	Pan-Pacific Copper Co., Ltd.	(155,656.00)
PX - 2571	F-7-b	PX - 2579	F-7-c	Pan-Pacific Copper Co., Ltd.	129,313.00
PX - 2573	F-8-b	PX - 2580	F-8-c	Pan-Pacific Copper Co., Ltd.	696,316.00
Subtotal					426,960.00
Total					**57,681,056.00**

Petitioner claims that the shipments and sales of its mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, Japan and Louis Dreyfus Commodities Metals Suisse SA of Switzerland are 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 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 above quoted provision, in order for an export sale to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, 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 Bangko Sentral ng Pilipinas.

Corollary thereto, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, prescribe 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;" *(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 invoices or receipts must be duly registered with the BIR as prescribed under Section 237 in relation to Section 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 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. . . . ."
>
> "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." *(Emphasis supplied)*

Pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1) and (2)(c) 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, to wit:

1. the sales invoice as proof of sale of goods;
2. 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
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.

The fact that petitioner is a VAT-registered is not disputed.[27] Pursuant to its Long Term Gold and Copper Concentrate Sales Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan,[28] for the period covering the fourth quarter of 2009, petitioner actually shipped mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, Japan and generated export sales in the amount of US$57,254,096.00, as shown in petitioner's Schedule of Export Sales,[29] which are duly

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[27] Par. 3, Summary of Facts Admitted, SFI, docket, p. 57.
[28] Exhibit "B".
[29] Exhibit "F".

substantiated by provisional invoices[30], final invoices[31], bills of lading[32], export declarations[33]. Likewise, the foreign currency proceeds derived from said export sales were inwardly remitted and accounted for in accordance with the rules and bank regulations of the Bangko Sentral ng Pilipinas as evidenced by the bank certifications[34] and entries in petitioner's passbook in local banks of the payments received.[35]

While the Court noted that the final invoices submitted by petitioner bear dates much later than the dates of shipment indicated in the bills of lading and provisional invoices, petitioner explained that in its direct exports of copper concentrates, it issues two invoices to the buyer. The first is the Provisional Invoice which it issues upon shipment covering the 90% of the estimated value of the shipment and the second is the Final Invoice which petitioner issues only after it has reached an agreement with the buyer regarding the final settlement of weights, assays and quotations or final value of the shipment, which are determined or done after arrival of the shipment at the port of loading.[36]

In other words, the considered date of the sale transaction is the shipment date indicated in the bill of lading. Considering that the bills of lading covering export sales of US$57,254,096.00 were all dated within the fourth quarter of 2009, the related final invoices of which carry dates much later than the dates when the sales or shipments were made, are deemed valid.

As to adjustments to correct billings for the previous quarter's shipments in the amount of US$426,960.00, this Court finds the adjustments proper as shown by Export Declarations,[37] Bill of Ladings,[38] Provisional Invoices,[39] and Final Invoices.[40]

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[30] Exhibits "F-1-b" to "F-3-b".
[31] Exhibits "F-1-c" to "F-3-c".
[32] Exhibits "F-1-a" to "F-3-a".
[33] Exhibits "F-1" to "F-3".
[34] Exhibits "G-1" to "G-8".
[35] Exhibit "G-1-a" to "G-8-a".
[36] Clause 9 of Exhibit "B".
[37] Exhibits "F-4" to "F-8".
[38] Exhibits "F-4-a" to "F-8-a".
[39] Exhibits "F-4-b" to "F-8-b".
[40] Exhibits "F-4-c" to "F-8-c".

In fine, petitioner's export sales for the fourth quarter of 2009 in the amount of US$57,681,056.00 with the peso value equivalent to ₱2,680,497,020.60 qualify for VAT zero rating.

After having resolved that petitioner had VAT zero-rated sales for the fourth quarter of 2009 in the total amount of ₱2,680,497,020.60, 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 or paid input taxes in connection with its zero-rated sales and if said input taxes were not applied against any output VAT liability of petitioner.

As stated earlier, petitioner's amended Quarterly VAT Return for the fourth quarter of 2009 reflected an input VAT of ₱11,162,217.00 on importations of goods other than capital goods and input VAT of ₱15,953,290.10 on domestic purchases of services or a total of ₱27,115,507.10, as shown below:

	Purchases	**Input Tax**
Importations - Goods other than capital goods	₱ 93,018,475.00	₱ 11,162,217.00
Domestic Purchase of Services	132,944,084.17	15,953,290.10
Total	**₱ 225,962,559.17**	**₱ 27,115,507.10**

To determine the accuracy of petitioner's declaration, the ICPA examined the voluminous documents of petitioner in support of its claim for refund. In her Report, the ICPA noted the following findings:[41]

A. INPUT TAXES ON IMPORTATIONS OF GOODS	
Supported by original BCORs[42]/BORs[43] and IEIRDs[44]	
Dated in the fourth quarter of 2009 (*Exhibits "H-1" to "H-34-a"*)	₱ 4,207,477.00
Out-of-period receipts:	
Dated in the second quarter of 2009 (*Exhibits "H-35" to "H-35-a"*)	29,598.00
Dated in the third quarter of 2009 (*Exhibits "H-36" to "H-64-a"*)	5,596,514.00
Supported by original BCORs only	
Dated in the fourth quarter of 2009 (*Exhibits "I-1"*)	8,459.00
Out-of-period receipts dated third quarter of 2009 (*Exhibits "I-2" to "I-3"*)	774,080.00
Supported by original IEIRDs only	
Dated in the fourth quarter of 2009 (*Exhibits "J-1"*)	129,285.00

[41] Exhibit "D", p.4
[42] Bureau of Customs Official Receipts
[43] Bank Official Receipts
[44] Import Entry and Internal Revenue Declarations

No supporting documents	416,804.00
Subtotal	**₱ 11,162,217.00**
B. INPUT TAXES ON DOMESTIC PURCHASES OF SERVICES	
Original VAT official receipts that are in the name of the petitioner	
Dated in the fourth quarter of 2009 (*Exhibits "L-1" to "L-51"*)	₱ 15,545,233.47
Not dated in the current quarter:	
Dated in the third quarter of 2009 (*Exhibits "L-52" to "L-77"*)	16,496.37
Dated in the first quarter of 2010 (*Exhibits "L-78"*)	57,181.03
No supporting VAT official receipts presented	334,379.23
Subtotal	**₱ 15,953,290.10**
Total	**₱ 27,115,507.10**

Based on the above ICPA's findings, petitioner's claim in the amount of ₱7,225,052.63 shall be disallowed for the reasons stated below:

	Importation	Domestic	Total
Supported by original BCORs/BORs and IEIRDs dated 2nd quarter of 2009	₱ 29,598.00	-	₱ 29,598.00
Supported by original BCORs/BORs and IEIRDs dated 3rd quarter of 2009	5,596,514.00	-	5,596,514.00
Supported by original BCORs dated 3rd quarter of 2009	774,080.00	-	774,080.00
Supported by original VAT ORs dated 3rd quarter of 2009	-	₱ 16,496.37	16,496.37
Supported by original VAT ORs dated 1st quarter of 2010	-	57,181.03	57,181.03
No supporting VAT official receipts	-	334,379.23	334,379.23
No supporting documents	416,804.00	-	416,804.00
Total	**₱6,816,996.00**	**₱ 408,056.63**	**₱ 7,225,052.63**

Sections 110(A)(1)(b) and (2)(b) of the NIRC of 1997, as amended, provide 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 Section 4.110-8 of RR No. 16-05, as amended, reads as follows:

"SEC. 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 ₱29,598.00, ₱5,596,514.00 and ₱774,080.00 as well as the input taxes on its domestic purchases of services in the amounts of ₱16,496.37 and ₱57,181.03 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.

Similarly, petitioner's claimed input taxes on importation of goods in the amount of ₱416,804.00 as well as the input taxes on domestic purchases of services in the amount of ₱334,379.23 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 aforequoted 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 16-05, as amended.

In addition, petitioner's claimed input taxes on domestic purchase of services in the amount of ₱349,678.31 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 ₱349,678.31:

Exh.	Supplier's Name	Taxable Amount	Input VAT	Findings
L-1	YRC Logistics Philippines Inc.	₱ 1,000.00	₱ 120.00	VAT not separately indicated
L-9	Asst'n of Int'l Shipping Lines Inc.	67.00	8.04	VAT not separately indicated
L-17	Intertek Testing Service Phils. Inc.	77,502.92	9,300.35	VAT not separately indicated
L-20	Asst'n of Int'l Shipping Lines Inc.	156.25	18.75	VAT not separately indicated
L-24	McPhar Geoservices (Phils.) Inc.	316,800.00	38,016.00	VAT not separately indicated
L-31	DSV Air & Sea Inc.	1,100.00	132.00	VAT not separately indicated
L-33	Intertek Testing Service Phils. Inc.	922,964.75	110,755.77	VAT not separately indicated
L39	DSV Air & Sea Inc.	1,100.00	132.00	VAT not separately indicated
L-42	McPhar Geoservices (Phils.) Inc.	930,384.00	111,646.08	VAT not separately indicated
L-46	EDSA Shangrila	9,200.00	1,104.00	VAT not separately indicated
L-48	Intertek Testing Service Phils. Inc.	312,271.00	37,472.52	VAT not separately indicated
L-49	McPhar Geoservices (Phils.) Inc.	115,280.00	13,833.60	VAT not separately indicated
L-50	McPhar Geoservices (Phils.) Inc.	226,160.00	27,139.20	VAT not separately indicated
Total		**₱ 2,913,985.92**	**₱ 349,678.31**	

Therefore, out of petitioner's reported input VAT for the fourth quarter of 2009 in the amount of ₱27,115,507.10 only the amount of ₱19,540,776.16 represents petitioner's valid input tax for the fourth quarter of 2009, tabulated herein below:

	Input VAT on Importation	**Input VAT on Domestic Purchases**	**Total**
Input VAT claimed	₱ 11,162,217.00	₱ 15,953,290.10	₱ 27,115,507.10
Less: Disallowances			
a) Per ICPA's Report	6,816,996.00	408,056.63	7,225,052.63
b) Per this Court's further verification	-	349,678.31	349,678.31
Total Disallowances	6,816,996.00	757,734.94	7,574,730.94
Valid Input VAT	**₱ 4,345,221.00**	**₱ 15,195,555.16**	**₱19,540,776.16**

A portion, however, of the ₱19,540,776.16 input VAT shall be applied against petitioner's reported output VAT liability for the fourth quarter of 2009 in the amount of ₱930,207.84[45]. Consequently, only the remaining input VAT of ₱18,610,568.32 can be attributed to the entire zero-rated sales declared and substantiated by petitioner, as computed below:

Substantiated Input VAT	₱ 19,540,776.16
Less: Output VAT	930,207.84
Refundable Input VAT attributable to zero-rated sales	**₱ 18,610,568.32**

Although the claimed input VAT was carried-over by petitioner in its succeeding Quarterly VAT Returns[46] from the first quarter of 2010 to the second quarter of 2011, the same remained unutilized since it was deducted in its Quarterly VAT Return for the second quarter of 2011, as "VAT Refund/TCC claimed"[47] from the total available input tax of ₱284,063,682.41[48] . Thus, the claimed input taxes for the fourth quarter of 2009 could not have been carried-over/utilized in the succeeding third quarter of 2011.

Respondent also contends that petitioner failed to comply with the provisions of Section 113(C) of the NIRC of 1997, as amended, and Section 4.113.3 of RR No. 16-05, as amended, which requires all persons subject to VAT to maintain a

[45] Exhibit "N-1(1/2)", Line 19B.
[46] Exhibits "N-2" to "N-7".
[47] Exhibit "N-7(1/2)", line 23D
[48] Exhibit "N-7(1/2)", line 22.

subsidiary sales journal and subsidiary purchase journal. A thorough scrutiny of the ICPA report reveals that there was no mention of a review conducted on the subsidiary journals. Hence, petitioner is deemed to have failed to substantiate its claim for refund.

However, the same issue was already addressed in CTA Case No. 8228[49] which involved petitioner's claim for refund but pertaining to a different period. The Court held therein that in judicial proceedings, the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court. Petitioner having submitted sufficient evidence to prove its claim for refund of excess and unutilized input VAT attributable to its zero-rated sales, the non-submission of petitioner's subsidiary sales journal and subsidiary purchase journal is not sufficient to deprive petitioner of its right to said refund. In requiring petitioner to prove that it maintains a subsidiary sales journal and subsidiary purchase journal, respondent is asking petitioner to establish its compliance with the accounting requirements imposed upon a VAT-registered taxpayer. In such a case, respondent should have conducted the necessary audit and examination of petitioner's administrative claim for refund or tax credit after petitioner filed the same. During said audit and examination, respondent could compel petitioner to prove its compliance with the said accounting requirements and failure on the part of petitioner to do so, respondent could go after petitioner for the civil and criminal penalties provided under Title X of the NIRC of 1997, as amended. Unfortunately, respondent neglected to do so.

In this case, records reveal that petitioner submitted sufficient evidence to prove that it is entitled to the refund of its excess and unutilized input VAT attributable to its zero-rated sales for the fourth quarter of 2009. Hence, non-submission of petitioner's subsidiary sales journal and subsidiary purchase journal is not sufficient to deprive petitioner of its right to said refund.

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 ₱18,610,568.32, representing its

[49] *Philex Mining Corporation vs. CIR,* CTA Case No. 8228, Resolution dated July 24, 2012.

unutilized and excess input VAT attributable to its zero-rated sales for the fourth quarter of 2009.

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