REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1525** (CTA Case No. 8808)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
PHILEX MINING CORPORATION, Respondent.	***Promulgated:*** APR 0 2 2018 2:31 p.m.

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DECISION

UY, J.:

The instant *Petition for Review*[1] was filed on October 21, 2016 by the Commissioner of Internal Revenue, praying for the reversal of the Decision dated May 19, 2016 and Resolution dated September 13, 2016, rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8808, entitled *"Philex Mining Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read:

Decision dated May 19, 2016:

"**WHEREFORE,** premises considered, the instant

[1] EB Docket, pp. 5 to 15.

Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱25,811,450.88**, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales for the first quarter of taxable year 2012.

SO ORDERED."

Resolution dated September 13, 2016:

"**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration (Of the Decision dated May 19, 2016)** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent 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, which includes the exploration, development, and operation of mining properties for commercial production, and the marketing of mine products it produces, consisting of gold bullion and copper ore concentrates. It is a VAT-registered taxpayer with Taxpayer's Identification No. 000-283-731-000, as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN8RC0000041684.

Respondent entered into a Long Term Gold and Copper Concentrates Sales Agreement with Pan Pacific Copper Co., Ltd. on March 11, 2004, and executed Contract No. P-100.00081 and Contract No. P-100.00081 Addendum No. 1 on August 16, 2007 and March 16, 2009, respectively, with Louis Dreyfus Commodities Metals Suisse SA for the sale and purchase of copper concentrates from respondent.

On April 24, 2012, respondent filed its Quarterly Value Added Tax (VAT) Return for the first quarter of taxable year 2012 through the Electronic Filing and Payment System (EFPS). Subsequently, respondent amended the said Quarterly VAT Return, filed through the EFPS, on September 25, 2013.

Respondent then applied for the refund of the input VAT it purportedly paid during the first quarter of 2012 through the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF-OSS), and submitted the supporting documents on December 17, 2013.

Due to the inaction of petitioner on respondent's administrative claim for refund, respondent filed a *Petition for Review* before the Court in Division on April 22, 2014 docketed as CTA Case 8808.

In his *Answer* in CTA Case No. 8808 filed on June 27, 2014, petitioner interposed, among others, certain special and affirmative defenses, alleging that respondent must prove the following: that it paid the alleged VAT input taxes for the periods in question; that the same alleged VAT input taxes were not utilized against any output tax liability; that the alleged VAT input taxes for the periods in question are attributable to its alleged VAT zero-rated export sales; that the administrative and judicial claims were filed within the period prescribed by law; that respondent's assertion that its zero-rated export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP) cannot be accorded weight. Allegedly, plain allegations without any evidentiary documents to support its claim will not justify respondent's application for tax refund; and that respondent must prove its compliance with the following, *viz.:*

a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);

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c. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of such claim;

d. That the input taxes of ₱43,739,035.58 allegedly representing respondent's excess and unutilized input VAT from its purchases of goods and services from VAT registered suppliers were:

    i. Paid by respondent;
    ii. Attributable to its zero-rated or effectively zero-rated sales; and
    iii. Such input taxes paid should not have been applied against any output tax.

e. That respondent's claim for tax credit/refund allegedly representing respondent's excess and unutilized input VAT in the amount of ₱43,739,035.58 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended.

After the pre-trial conference held on August 14, 2014 in CTA Case No. 8808 the parties submitted their *Stipulation of Facts and Issues* on September 23, 2014. Thereafter, the Court in Division issued a Pre-Trial Order on October 14, 2014.

Upon motion of herein respondent, the Court in Division commissioned Atty. Conrado M. Briones, as the Independent Certified Public Accountant (ICPA) on October 16, 2014.

During trial, respondent presented Sylvia P. Delos Santos and Atty. Conrado M. Briones as its witnesses.

Thereafter, respondent filed its *Formal Offer of Evidence* on February 23, 2015, consisting of Exhibits "P-1" to "P-10", "P-12", and "P-14" to "P-16," inclusive of submarkings. In the Resolution dated April 14, 2015, the Court in Division admitted all offered exhibits of respondent.

On the other hand, petitioner's counsel manifested during the hearing on February 9, 2015, that he has no evidence to present. Accordingly, the Court in Division gave the parties a thirty (30)-day period to file their respective memoranda.

The case was considered submitted for decision on June 11, 2015, after the filing of respondent's *Memorandum* on May 7, 2015 and that of petitioner on June 4, 2015.

In the assailed Decision, the Court in Division partially granted the *Petition for Review* and ordered petitioner to refund in favor of respondent the amount of ₱25,811,450.88, representing respondent's unutilized excess input VAT attributable to its zero-rated sales for the first quarter of taxable year 2012.[2]

Petitioner then filed his *Motion for Reconsideration (Of the Decision dated May 19, 2016)* on June 7, 2016,[3] while, respondent filed its *Comment/Opposition* thereto on July 7, 2016.[4] In the assailed Resolution dated September 13, 2016, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.[5]

Thus, petitioner filed a *Motion for Extension of Time to File Petition for Review* on October 6, 2016.[6] In the Minute Resolution dated October 10, 2016,[7] the Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from October 6, 2016, or until October 21, 2016, within which to file his *Petition for Review.*

On October 21, 2016, petitioner filed the instant *Petition for Review.*[8]

Without necessarily giving due course to the *instant Petition for Review*, respondent was directed by the Court *En Banc* to file its *Comment* thereon.[9] Consequently, respondent filed its *Comment* on December 7, 2016.[10]

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[2] EB Docket, pp. 19 to 41, 40.
[3] Division Docket (CTA Case No. 8808) – Vol. 2, pp. 753 to 761.
[4] Division Docket (CTA Case No. 8808) – Vol. 2, pp. 764 to 770.
[5] EB Docket, pp. 42 to 50; Division Docket (CTA Case No. 8808) –Vol. 2, pp. 772 to 780.
[6] EB Docket, pp. 1 to 3.
[7] EB Docket, p. 4.
[8] EB Docket, pp. 5 to 15.
[9] Resolution dated November 15, 2016, EB Docket, pp. 53 to 54.
[10] EB Docket, pp. 55 to 62.

In the Resolution dated January 11, 2017,[11] the parties were directed to submit their respective memoranda. Pursuant thereto, petitioner filed his *Memorandum* on February 23, 2017,[12] while respondent filed a *Manifestation (Re: Resolution dated January 11, 2017)* on February 21, 2017,[13] stating that it is adopting the arguments it has already advanced in its *Comment* filed on December 7, 2016.

Thereafter, the instant *Petition for Review* was deemed submitted for decision on April 5, 2017.[14]

Hence, this Decision.

THE ISSUES

Petitioner raises the following assignments of errors, to wit:

"I.

The Honorable Third Division erred in concluding that respondent had VAT zero-rated sales and the input taxes paid were actually attributable thereto.

II.

The Honorable Third Division erred in considering all the final invoices bearing dates later than the dates of sale of respondent's products.

III.

The Honorable Third Division erred in concluding that respondent's non-submission of Subsidiary Sales Journal and Subsidiary Purchase Journal is not fatal to its claim for input VAT refund.

IV.

The Honorable Third Division erred in ruling that respondent was able to fully substantiate its claim for refund."[15]

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[11] EB Docket, pp. 64 to 65.
[12] EB Docket, pp. 66 to 75.
[13] EB Docket, pp. 76 to 77.
[14] EB Docket, pp. 81 to 82.
[15] EB Docket, pp. 7 to 8.

Based on the foregoing assignments of errors, the general issue raised by petitioner is as follows:

> Whether or not, respondent is entitled to a refund in the reduced amount of ₱25,811,450.88, representing respondent's unutilized excess input VAT attributable to its zero-rated sales for the first quarter of taxable year 2012, as ruled by the Court in Division.

Petitioner's arguments:

Petitioner contends that the Court in Division erred in concluding that respondent had VAT zero-rated sales and the input taxes paid were actually attributable thereto. According to petitioner, respondent may have presented sales invoices, however, it failed to produce in evidence, proof of actual receipt of the goods and the BOI statement showing the amount and description of the goods delivered to the foreign buyer, as enunciated in the case of *Atlas Consolidated Mining Corporation vs. Commissioner of Internal Revenue*[16] (hereinafter referred to as the "*Atlas* case").

Allegedly, the Court in Division should not have considered as valid all the final invoices bearing dates later than the dates of sale of respondent's products.

Moreover, respondent's failure to submit the Subsidiary Sales Journal and the Subsidiary Purchase Journal is allegedly a sufficient ground to deny the claim. According to petitioner, respondent also failed to prove that the documents it submitted in support of its claim for refund is sufficient despite non-submission of the aforementioned documents.

Finally, petitioner claims that respondent was not able to fully substantiate its claim for refund.

Respondent's counter-arguments:

Respondent counter-argues that its lines of business/industry are *"1010 Gold Ore Mining"* and *"1020 Copper Ore Mining"*, as stated in its BIR Certificate of Registration (BIR Form No. 2303). In the Certification issued by the Board of Investments (BOI) on January 11,

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[16] G.R. No. 141104 and 148763, June 8, 2007.

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2013, it was confirmed that respondent *"exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2012."*

Since respondent's line of business is *"Gold Ore Mining"* and *"Copper Ore Mining"* and it has exported its total production during the period covered by this particular claim (1st quarter of 2012), there is allegedly no question that all the substantiated input taxes that it incurred in the domestic purchases of goods or services and importation of goods used in its line of business would be attributable to its substantiated or valid zero-rated sales.

Respondent asserts that the attribution made by the Court in Division of the remaining substantiated input VAT of ₱32,448,781.14 to the entire zero-rated sales declared by respondent in the amount of ₱2,516,482,837.13, and the proportionate allocation of said remaining substantiated input VAT between the substantiated or valid zero-rated export sales and the portion of the export sales that did not qualify as zero-rated, on the basis of volume of the sales, are in accordance with court decisions and the last proviso of Section 112 (A) of the Tax Code.

Anent the final invoices bearing dates later than the dates of sale, respondent posits that the issuance of a final invoice at a later date was necessitated by the fact that, from the very nature of the exported products (minerals), their final prices cannot be determined on the date of shipment. As of the time of shipment, the product has yet to undergo certain intricate procedures at the buyer's smelting/refinery plant at the port of discharge abroad, to determine the final settlement and final prices for payable copper, gold, and silver. This is the reason why only a provisional invoice is issued on the date of shipment covering 90% of the estimated or provisional price, and a final invoice is issued later, after the above procedures are completed and after the final prices are determined, covering the balance of the final price. But the above procedure that delays the determination of the final prices and the issuance of the final invoice does not detract from the fact that the considered date of the sale of the transaction is the shipment date indicated in the Bill of Lading.

Moreover, respondent argues that the presentation of the subsidiary purchase/sales journal is not required for refund of input tax attributable to zero-rated sales.

Finally, respondent does not dispute that there was a failure to fully substantiate the claim. However, the Court in Division has already taken this into consideration in its Decision. This is the reason why it disallowed a total of ₱17,927,584.70 out of the total claim of ₱43,739,035.58, and ordered a refund of only ₱25,811,450.88, representing the portion that was fully substantiated.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The Atlas case is not applicable to VAT refund cases which are no longer governed by Revenue Regulations (RR) Nos. 5-87 and 3-88.

Petitioner argues that respondent's failure to submit certain documents pursuant to the *Atlas* case is fatal to its claim.

We are not convinced.

A careful reading of the *Atlas* case would reveal that the ruling made therein was anchored on RR Nos. 5-87[17], as amended by RR No. 3-88[18], which required, in support of refund claim of input VAT, the submission of certain documents, including proof of actual receipt of the goods and the BOI statement showing the amount and description of the goods delivered to the foreign buyer.

Relative thereto, however, Section 23 of Republic Act (RA) No. 9337, which took effect on July 1, 2005, provides as follows:

> "SEC. 23. *Implementing Rules and Regulations.* — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the effective implementation of this Act. **Upon issuance of the said rules and regulations, all former rules and regulations**

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[17] SUBJECT: Value-Added Tax

[18] SUBJECT: Revenue Regulations Amending Sections 16 and of Revenue Regulations No. 5-87

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> **pertaining to value-added tax shall be deemed revoked.**" *(Emphasis supplied)*

Pursuant to the foregoing provision, rules and regulations pertaining to VAT issued before the effectivity of RA No. 9337, such as RR No. 5-87 and the amendments thereto, like RR No. 2-88, shall be deemed revoked upon the issuance of the rules and regulations implementing the said law, not later than June 30, 2005.

On June 22, 2005, the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue, issued RR No. 14-2005, also known as the *"Consolidated Value-Added Tax Regulations of 2005"*, which became effective on July 1, 2005. Parenthetically, RR No. 14-2005 was later superseded by RR No. 16-2005 on September 1, 2005, which took effect on November 1, 2005. The latter RR, in turn, has undergone several amendments thereafter.

Correspondingly, all RR pertaining to VAT, including RR Nos. 5-87 and 3-88 were deemed revoked as of July 1, 2005. Thus, unless the provisions of Section 16 of RR No. 5-87, as amended by RR No. 3-88, which required the submission of specific documents to be entitled to VAT zero-rating and corresponding VAT refund, have been retained in the said RR No. 14-2005 and subsequent RR pertaining to VAT, such a requirement under the said Section 16 is deemed revoked.

A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of Section 16, as to the submission of specific documents, have not been retained. Such being the case, the specific documentary requirements laid down under Section 16 of RR No. 5-87, as amended by RR No. 3-88, *vis-à-vis* the *Atlas* case in connection with the claims for refund of input VAT, are no longer binding, upon the effectivity of RR No. 14-2005, *i.e.,* on July 1, 2005.

In this case, since the subject claim for refund pertains to the 1st quarter of 2012, respondent must already comply with the provisions of RR No. 16-2005, as amended, in addition to the legal requirements of the pertinent provisions of the NIRC of 1997, as amended by RA No. 9337, and pertinent jurisprudence, but no longer in accordance with Section 16 of RR No. 5-87, as amended by RR No. 3-88, as enunciated in the *Atlas* case.

Thus, it is of no moment that respondent failed to produce or submit: (1) evidence or proof of actual receipt of the goods, and (2) the BOI statement showing the amount and description of the goods delivered to the foreign buyer, which are required under Section 16 of RR No. 5-87, as amended by RR No. 3-88, *vis-a-vis* the *Atlas* case.

The Court in Division did not err in considering as valid, final invoices bearing dates later than the dates of sale of respondent's products.

Petitioner posits that the Court in Division should not have considered as valid all the final invoices bearing dates later than the dates of sale of respondent's products.

We disagree.

As correctly found by the Court in Division, it was established that the shipment date in the Bills of Lading and Provisional Invoices is the date of sale. The Final Invoices bearing dates later than the dates of shipment does not remove the fact that the sales and actual shipment of goods from the Philippines to a foreign country, as contemplated under Section 106 (A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, had actually transpired during the period of claim. The final invoices are merely additional evidence to support respondent's claimed zero-rated sales, having been issued by respondent in reference to sales transactions consummated during the period of claim.

As stated in the assailed Decision, aside from the provisional invoice issued by respondent upon shipment, a final invoice was issued after the contracting parties reached an agreement regarding the final settlement of weighs, assays and quotations or final value of the shipment which is done after arrival of the shipment at the port of loading. Thus, the Final Invoices dated outside the period of claim do not cover separate sales transactions for different taxable periods, but actually relates to the sales transactions of respondent during the period of claim as indicated in the provisional invoices, bills of lading and export declarations.

It is noteworthy that this established fact was not refuted by contrary evidence in the proceedings *a quo* by petitioner, and thus, must be maintained.

Respondent's failure to submit the Subsidiary Sales Journal and the Subsidiary Purchase Journal is not fatal to its claim for refund.

Citing Section 113(B)[19] of the NIRC of 1997 and Section 4.113.3 of RR No. 16-2005, petitioner also argues that respondent's failure to submit the Subsidiary Sales Journal and Subsidiary Purchase Journal is sufficient ground to deny its claim.

We likewise disagree.

Indeed, Section 113(C) of the NIRC of 1997, as amended, and Section 4.113.3 of RR No. 16-2005 require that a Subsidiary Sales Journal and a Subsidiary Purchase Journal are required **to be maintained** by all persons subject to VAT, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
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> xxx xxx xxx
>
> (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, <u>maintain</u> 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." *(Emphasis and underscoring supplied)*
>
> "SEC. 4.113-3. *Accounting Requirements.* – Notwithstanding the provisions of Sec. 233, **all persons subject to VAT under Section 106 and 108 of the Tax Code shall, in addition to the regular accounting**

[19] Now Section 113(C), as renumbered by RA No. 9337.

> **records required, <u>maintain</u> 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." *(Emphasis and underscoring supplied)*

However, a careful reading of the foregoing provisions reveals that the same only require that the said subsidiary journals **must be maintained** by a VAT taxpayer. Nowhere in the said provisions does it state that the presentation of the subsidiary sales journal and subsidiary purchase journal is a condition *sine qua non* to entitle the taxpayer to its claim for refund or tax credit for input tax attributable to zero-rated sales. As a corollary, the absence of the same subsidiary journals does not denigrate the finding that there were zero-rated sales made, and purchases with passed-on input VAT incurred, by respondent, as these are already supported by sufficient evidence as presented and offered in the proceedings *a quo*.

Thus, we do not agree with petitioner's contention that the non-submission of the said subsidiary journals is a sufficient ground for the denial of respondent's claim.

Petitioner failed to rebut the factual findings of the Court in Division.

Finally, petitioner argues that respondent was not able to fully substantiate its claim for refund.

We are not swayed.

A perusal of the subject *Petition for Review* reveals that petitioner failed to rebut any of the factual findings of the Court in Division which was its basis in ruling that respondent was able to

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substantiate its claim for refund. In fact, petitioner did not present any evidence at all.

It is a basic rule that he who alleges must prove what is alleged.[20] In this case, the CIR failed to discharge its burden of disproving the findings of facts made by the Court in Division.

In the assailed Decision, the Court in Division found, after careful examination of the documents proffered by the respondent, in addition to the Amended Report of the ICPA, that respondent is entitled to a refund, albeit in the reduced amount of ₱25,811,450.88, to wit:

> "A scrutiny of the sales invoices, both provisional and final, supporting petitioner's sales of gold to Heraeus Ltd. amounting to ₱1,099,909.00, shows that the same were not duly registered with the BIR as there was no BIR Permit number reflected thereon and the word 'VAT' after petitioner's TIN was not imprinted. Likewise, the word 'zero-rated sales' was not stamped nor imprinted on the Provisional Invoice. Thus, petitioner's reported sales in the amount of ₱1,099,909.00 cannot qualify for VAT zero-rating.
>
> Furthermore, to ascertain whether the above breakdown of zero-rated sales were paid for in acceptable foreign currency and the payments were accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, the Court considered petitioner's Summary of Sales and Remittances, as well as the Certificates of Inward Remittances issued by the local banks and the passbook pages, showing the amounts credited and the dates of remittances.
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> An examination of the aforesaid documents confirms that only ninety percent (90%) of the export sales per Provisional Invoices for the current quarter's shipments (*i.e.,* first quarter of 2012), corresponds to the inward remittances received by petitioner. Since petitioner did not submit any documentary evidence to prove that the remaining receivable was subsequently collected and accounted for in acceptable foreign currency, the same

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[20] *Eastern Assurance and Surety Corporation vs. Con-Field Construction and Development Corporation*, G.R. No. 159731, April 22, 2008.

shall be disregarded in computing the valid zero-rated sales.

As regards the Catch-up Adjustments to Prior Quarter's Shipments, the final balance due per Final Invoices (net of 90% provisional drawings) matches the inward remittances, except for Final Invoice Nos. 2642 and 2639 (Provisional Invoice Nos. 2631 and 2632, respectively) where no proof of inward remittance was presented, to wit:

xxx xxx xxx

As a result, the amount of US$10,956,894.06, representing the difference between the export sales as recorded in the General Ledger and the corresponding inward remittances for the first quarter of 2012 shipments, shall be disallowed as zero-rated sales, detailed below:

xxx xxx xxx

Accordingly, petitioner's export sales for the first quarter of 2012 with the net adjusted amount of US$46,886,860.94, with peso equivalent of ₱2,001,741,541.59, qualify for VAT zero-rating, as computed below:

xxx xxx xxx

Petitioner's Quarterly VAT Return for the first quarter of 2012 reflected input VAT on importations of goods and on domestic purchases of services in the total amount of P43,955,907.27, broken down as follows:

xxx xxx xxx

In order to determine the accuracy of petitioner's declaration, the Independent CPA, Atty. Conrado Briones, examined the voluminous documents of petitioner in support of its claim for refund. Based on his findings, petitioner's claim in the amount of ₱8,581,978.50, as presented below, shall be disallowed for not being properly substantiated by supporting documents, as prescribed under Sections 110 (A), 113 (B) (2) (a), and 237 of the NIRC of 1997, as amended, in relation to

Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:

xxx xxx xxx

In addition, the Court finds that the input taxes in the amount of ₱2,708,275.94, as detailed below, should be disallowed for petitioner's failure to meet the substantiation requirements prescribed by law.

xxx xxx xxx

Therefore, out of petitioner's reported input VAT of ₱43,955,907.27 for the first quarter of 2012, only the amount of ₱32,665,652.83 represents petitioner's valid input tax, as computed below:

xxx xxx xxx

A portion, however, of the ₱32,665,652.83 substantiated input VAT shall be applied against petitioner's reported output VAT liability for the first quarter of 2012 in the amount of ₱216,871.69. Hence, only the remaining input VAT of ₱32,448,781.14 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱2,516,482,837.13 (with US$ equivalent of US$58,943,664.00) and only the input VAT of ₱25,811,450.88 is attributable to the substantiated zero-rated sales of ₱2,001,741,541.59 (with US$ equivalent of US$46,886,860.94), as computed below:

xxx xxx xxx

Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns from the second quarter of 2012 to the third quarter of 2013, the same remained unutilized since it was deducted in its Quarterly VAT Return for the third quarter of 2013 as 'VAT Refund/TCC claimed' from the total available input tax of ₱240,936,818.31. Therefore, the claimed input taxes for the first quarter of 2012 could not have been carried over or utilized in the succeeding fourth quarter of 2013.

In recapitulation, the Court finds petitioner entitled to a refund in the reduced amount of ₱25,811,450.88, representing its unutilized excess input VAT attributable to zero-rated sales for the first quarter of taxable year 2012."

Considering that the Court in Division made the foregoing factual findings, it behooves petitioner to specifically pinpoint any error, or validly argue against the said findings. The mere general averment of petitioner that the respondent failed to fully substantiate its claim for refund failed to convince the Court *En Banc* that a reversible error was committed by the Court in Division as the same is unsubstantiated, too vague, highly speculative, and uncertain. As between the above-stated findings of the Court in Division and the general averment of petitioner, the former must perforce prevail.

Thus, the ruling of the Court in Division, that respondent was able to substantiate its claim for VAT refund or issuance of tax credit certificate, albeit in the reduced amount of ₱25,811,450.88, must be sustained.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is hereby **DENIED** for lack of merit. The assailed Decision dated May 19, 2016 and the assailed Resolution dated September 13, 2016 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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