REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8044

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:
APR 17 2012 ; 9:05 a.m.

x - x

DECISION

***Fabon-Victorino, J.*:**

This case involves a claim for refund or issuance of a tax credit certificate (TCC) in the amount of Php12,887,505.59, allegedly representing input value-added tax (VAT) attributable to zero-rated sale for the first (1^{st}) quarter of taxable year 2008, filed by petitioner Philex Mining Corporation on March 29, 2010.

Petitioner alleges that it is a duly organized and existing domestic corporation with principal office at 27 Brixton St., Pasig

City. It is engaged in mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is a registered VAT taxpayer with VAT Registration Certificate No. 35-6-000731 effective October 29, 1997. It has an approved Application for Zero-Rate, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95, effective April 12, 1998. [1]

Respondent, on the other hand, is the government official charged with the administration and enforcement of the national internal revenue laws, with the authority to grant refund or tax 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, Diliman, Quezon City.

During the 1st quarter of 2008, petitioner sold and shipped its production of mineral products to a foreign buyer as direct exports. The said sale amounted to Php2,166,288,788.31 and was paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

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[1] Pars. 1 and 2, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), docket, p. 39.

During the same period, it purchased imported goods and availed domestic services in the amount of Php99,342,433.34 and Php8,053,446.59, respectively, all for use in its mining operations, production and sale of its mine products. For the said purchases, petitioner paid input tax of Php11,921,092.00 and Php966,413.59, respectively, or in the sum of Php12,887,505.59.

On April 22, 2008, petitioner filed its original or tentative VAT return for the 1st quarter of 2008. Subsequently or on December 11, 2009, it filed an amended return for the said quarter reflecting the following[2]:

	Amount	Input Tax
Zero-rated sales	P2,166,288,788.31	-
Importation of goods	99,342,433.34	P11,921,092.00
Domestic purchase of services	8,053,446.59	966,413.59

On March 4, 2010, petitioner filed a claim for refund/tax credit with the One-Stop-Shop Center of the Department of Finance, per Application No. 49810, covering its unutilized input VAT for the first quarter of 2008 in the amount of Php12,887,505.59.[3]

[2] Par. 3, Summary of Facts Admitted, SFI, docket, p. 39.
[3] Par. 4, Summary of Facts Admitted, SFI, docket, p. 40.

About twenty-five (25) days thereafter or on March 29, 2010, petitioner filed the instant Petition for Review allegedly to preserve its right to claim for refund of its excess and unutilized input taxes for the first quarter of 2008 hinged on the ground of inaction on the part of respondent.

In her Answer[4] filed on May 6, 2010, respondent moves to dismiss the petition raising the following *Special and Affirmative Defenses* as grounds therefore, viz:

> "4. The claim for refund is still undergoing routinary investigation. Said claim for refund had just been filed on 4 March 2010 and the instant Petition was filed before this Honorable Court on 10 March 2010, barely six (6) days after the filing of the claim for refund/tax credit before the One Stop Shop of the Department of Finance;
>
> 5. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
>
> 6. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;
>
> 7. The Petitioner should prove that the input tax of the Petitioner remains to be unutilized."

[4] Docket, pp. 24-25.

The parties filed their respective pre-trial briefs,[5] followed by their *Stipulation of Facts and Issues*[6] on May 21, 2010, which the Court approved in its Resolution[7] dated May 27, 2010.

Trial ensued during which petitioner presented two witnesses, namely: 1) Eileen C. Rodriguez, a Manager in its Accounting Department; and 2) Albert G. Alba, the Court Commissioned Independent Certified Public Accountant (ICPA).

Witness Eileen Rodriguez, by way of a Judicial Affidavit[8], testified that she is a manager in the Accounting Department of petitioner. As such, she is tasked to supervise and review the preparation and filing of various tax returns, including the filing of claims for refund of overpaid or excess taxes.

On April 22, 2008, petitioner allegedly filed its original or tentative VAT return for the first quarter of 2008 which was amended on December 11, 2009 to reflect the zero-rated sales in the amount of Php2,166,288,788.31.

[5] Docket, pp. 26-28 and pp. 30-34.
[6] Docket, pp. 39-40.
[7] Docket, p.42.
[8] Docket, pp.43-48.

She continued to say that during the first quarter of 2008, petitioner's copper concentrates productions were sold to Pan Pacific Copper Co. Ltd, a Japanese company based in Tokyo, Japan. The sale is covered by a "Long Term Gold and Copper Concentrates Sales Agreement" dated March 11, 2004. Under the said agreement, the buyer is required to pay the price of each shipment of copper concentrates in two (2) stages. First, a provisional payment at the time of shipment equivalent to ninety percent (90%) of the provisional price as determined by the seller based on shipped weight and the seller's provisional assay. The second stage is the final payment to cover the balance of the concentrate value upon presentation of the final invoice after all data necessary to determine the final settlement are available. This explains the delay in the issuance by petitioner of the Final Invoices.

All payments by the Japanese Company were in United States Dollar deposited in an account designated by the Seller or Buyer, as the case may be.

As the commissioned ICPA, Albert G. Alba testified that he conducted an audit pertinent to the present claim for refund or issuance of tax credit certificate of petitioner. In relation thereto, he prepared a Report[9] dated July 20, 2010 submitted to the Court on July 22, 2010, copy furnished respondent. His examination and validation of petitioner's pertinent documents show that out of the excess input tax paid for the first quarter of 2008 in the amount of Php12,887,505.59, Php403,320.59 was used by petitioner to pay its output tax for the quarter. The balance of Php12,887,505.59 was deducted as VAT refund/TCC claimed in the fourth quarter of 2009 and not carried over to the first quarter of 2010.

On January 3, 2011, the Court, sans any comment or opposition from respondent, admitted the documents formally offered by petitioner on November 5, 2010.[10]

During the hearing on March 3, 2011, respondent's counsel submitted the case for decision without presentation of any evidence on the ground of lack of records from the Bureau of Internal Revenue.[11]

On April 12, 2011, the Petition for Review was submitted for decision taking into consideration the Memorandum of

[9] Docket, pp. 60-82.
[10] Docket, pp. 102-103.
[11] Docket, p. 104.

petitioner filed on April 4, 2011, again, sans respondent's Memorandum.[12]

THE ISSUE

The lone issue[13] as stipulated by the parties is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE EXCESS INPUT TAXES IN THE TOTAL AMOUNT OF PHP12,887,505.59 FOR THE 1st QUARTER OF 2008 REPRESENTING ITS UNUTILIZED INPUT VAT FOR THE PURCHASE/IMPORTATION OF GOODS AND SERVICES ON ACCOUNT OF ITS BEING A PRODUCER AND EXPORTER OF MINERAL PRODUCTS."

THE COURT'S RULING

The Court finds the petition partly meritorious.

Claims for refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales is governed by Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which states, thus:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -

[12] Docket, p. 127.
[13] Docket, p. 40.

> (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 of 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."

Hence, to be entitled to a refund, the claimant must establish compliance with the following requisites:

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 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.[14]

Over and above the foregoing requirements, the claimant must file the Petition for Review before the CTA within the period prescribed under Section 112(C) of the NIRC, which reads as follows:

> "(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 provision allows the affected taxpayer to appeal before the CTA within thirty (30) days from receipt of the decision or

[14] *Philex Mining Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 7587, December 8, 2009.

from inaction of the Commissioner of Internal Revenue after the lapse of the one hundred twenty (120)-day period.

Paramount however, is the timeliness of the filing of the claim for refund or TCC in the administrative as well as in the judicial level.

Under Section 112 (A) of the NIRC of 1997, as amended, a taxpayer must file an application for refund or tax credit of unutilized or excess creditable input VAT attributable to its zero-rated or effectively zero-rated sales within two (2) years after the close of the taxable quarter when the sales were made.

The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.),*[15] settled this issue well enough. As carefully explained in the said case, the reckoning of the two-year prescriptive period for the filing of a claim for refund of input VAT under Section 112 (A) of the NIRC of 1997 commences from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

[15] G.R. No. 172129, September 12, 2008.

The subject of the present claim for refund or issuance of a tax credit certificate is petitioner's unutilized or excess creditable input VAT, attributable to zero-rated or effectively zero-rated sales for the first quarter of 2008. Hence, counting from March 31, 2008 or the close of the first quarter, petitioner had until March 31, 2010, within which to file its administrative claim with respondent. Evidently, petitioner's application for refund with the One-Stop-Shop Center of the Department of Finance was filed within the two-year prescriptive period on March 4, 2010.

However, the same is not true with filing of the instant Petition for Review.

From March 4, 2010 or the date petitioner's application for refund was filed with the BIR and presumably the date of its submission of complete documents supporting its application for refund, the Commissioner of Internal Revenue had one hundred twenty (120) days or until July 2, 2010, within which to decide on the claim. After the lapse of the said 120-day period without any action on her part, petitioner had thirty (30) days or until August 1, 2010, within which to seek judicial recourse.

In the instant case, petitioner worked against time and prematurely filed its Petition for Review on March 29, 2010 or barely twenty-five (25) days from the filing of its administrative claim, clearly without waiting for the 120-day period to lapse. Evidently, petitioner failed to exhaust the administrative remedies available under the law.

As stressed in a litany of cases, a party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief, but also pursue to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.[16] If a litigant goes to court without first pursuing his administrative remedies, his action is premature as he has no cause of action to ventilate in Court. His case is simply not ripe for judicial determination.[17]

But time and again, it has been ruled that failure to exhaust available administrative remedies will not deny the Court of its jurisdiction over the case as the same will amount only to a judicial petition wanting a cause of action.

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[16] Carale vs. Abarintos, G.R. No. 120704, March 3, 1997.
[17] Aboitiz vs. Collector of Customs, 83 SCRA 271; Abe-Abe vs. Manta, 90 SCRA 531.

Jurisprudential precept that failure to exhaust administrative remedies is not jurisdictional cannot be denied. The non-exhaustion of administrative remedies merely renders the action premature which means that the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[18]

Since the failure to exhaust administrative remedies is not jurisdictional, the defense of failure to exhaust administrative remedies is waivable or may be considered waived if not seasonably raised in a motion to dismiss or in the Answer pursuant to Section 1, Rule 9 of the Rules of Court.[19] Under the said provision, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except if dismissal is based on the following: (1) lack of jurisdiction; (2) litis pendencia; (3) res judicata; and (4) prescription.

An examination of the record shows that respondent failed to raise the defense of prematurity in the filing of the instant petition in his Answer thereto. Neither was respondent able to

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[18] *Supra*, note 16.
[19] Rule 9, Sec. 1. Defenses and objections pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

raise it as ground in a *Motion to Dismiss*. Moreover, it was jointly stipulated[20] that the instant petition was filed with the Court within the period of limitation prescribed under Section 112(C) of the NIRC of 1997, as amended. Such act may be considered as a waiver of the said defense on the part of respondent. In fine, the Court may aptly take cognizance of the instant Petition for Review.

On the remaining requirements for the entitlement to a refund, viz, to prove the existence of its alleged zero-rated sales generated pursuant to Section 106(A)(2)(a)(1) of the NIRC, petitioner offered as evidence its Long Term Gold and Copper Concentrates Sale Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan[21], Schedule of Export Sales-1st quarter of 2008[22], Export Declarations[23], Bills of Lading[24], Provisional Invoices[25], Final Invoices[26], Summary of Sales and Remittances for 1st quarter of 2008[27], Certificates of Remittances issued by local

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[20] Paragraph 6, Summary of Facts Admitted, Stipulation of Facts and Issues, Docket, p. 40.
[21] Exhibit "B".
[22] Exhibit "E".
[23] Exhibits "E-1" to "E-10".
[24] Exhibits "E-1-a" to "E-10-a".
[25] Exhibits "E-1-b" to "E-10-b".
[26] Exhibits "E-1-c" to "E-10-c".
[27] Exhibit "F".

banks[28], and passbook pages showing amounts credited and dates of remittances.[29]

Relevantly, Section 106(A)(2)(a)(1) of the NIRC provides:

> "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)."

For an export sale to qualify as VAT zero-rated, the following conditions must concur, to wit:[30]

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[28] Exhibits "F-1" to "F-6".
[29] Exhibits "F-1-a" to "F-6-b".
[30] Note 14, *supra*.

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* (BSP).

The fact that petitioner is a VAT-registered entity is not disputed. Thus, the existence of the alleged export sales, including the payment of acceptable foreign currency for such sales, which should be accounted for in accordance with the rules and regulations of the BSP, must be established.

The Court-commissioned ICPA Albert G. Alba revealed in his Report[31] dated July 20, 2010 that petitioner's zero-rated export sales amounted to US$54,657,954.00 with peso equivalent of Php2,166,288,788.31, as indicated in petitioner's Quarterly VAT Return for the first quarter of 2008, broken down as follows:

Provisional billings for direct export of copper to Japan	US$ 49,818,459.00
Adjustments to previous quarters' provisional billings	4,839,495.00
Total Zero-rated Sales	**US$ 54,657,954.00**

[31] See note 9, *supra*.

Further scrutiny reveals that the amount of US$49,818,459.00 consists of sales to the following:

Pan Pacific Copper Co. Ltd., Japan	US$ 17,389,736.00
Louis Dreyfus Commodities Metals Suisse SA	15,590,026.00
Louis Dreyfus Commodities Metals Suisse SA	16,838,697.00
Provisional billings for direct export of copper	**US$ 49,818,459.00**

A closer examination of the sales invoices supporting petitioner's direct export sales of copper for the first quarter of 2008 to Louis Dreyfus Commodities Metal Suisse SA of Switzerland in the total amount of US$32,428,723.00 *(US$15,590,026.00 + US$16,838,697.00)* shows that they were not duly registered with the BIR. Per BIR Permit No. OCN3AU0000030052 dated April 19, 1999, petitioner was authorized to print sales invoices bearing serial numbers from PX2101 to PX2500.[32] However, the invoices supporting petitioner's direct export sales of copper to Louis Dreyfus Commodities Metal Suisse SA of Switzerland had serial numbers PX2540 and PX2542, which were obviously printed outside the authority of petitioner to print. Considering that the sales invoices issued thereto were not duly registered with the BIR in

[32] Reflected in final sales invoices marked as Exhibits "E-2-c" and "E-3-c".

violation of Section 237,[33] in relation to Section 238[34] of the NIRC of 1997, such sales could not qualify for VAT-zero rating.[35]

As regards petitioner's direct export sales of copper concentrates to Pan Pacific Copper Co. Ltd. of Japan for the first quarter of 2008 in the amount of US$17,389,736.00, the same qualify for VAT zero-rating. It was established that petitioner sold and actually shipped its mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, Japan and generated export sales in the amount of US$17,389,736.00 as shown in its Schedule of Export Sales[36] and various export documents such as provisional[37] and final[38] sales invoices, bills of lading[39], and export declarations[40].

The foreign currency proceeds of US$17,389,736.00 derived from said export sales were inwardly remitted and

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[33] 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 xxx.
[34] 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 xxx.
[35] *Philex Mining Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 7063, February 24, 2009.
[36] Exhibit "E".
[37] Exhibit "E-1-b".
[38] Exhibit "E-1-c".
[39] Exhibit "E-1-a".
[40] Exhibit "E-1".

accounted for in accordance with the rules and regulations of the BSP as evidenced by the Summary of Sales and Remittances[41], certification issued by local bank[42], and entry in petitioner's passbook with local bank[43].

As to the adjustments to correct billings for previous quarter's shipments in the amount of US$4,839,495.00, the Court finds the adjustments proper as shown in the provisional[44] and final[45] sales invoices, bills of lading[46], and export declarations[47] submitted by petitioner.

Hence, petitioner's direct export sales of copper concentrate to Pan Pacific Copper Co. Ltd. of Japan for the first quarter of 2008 in the total amount of US$22,229,231.00 (US$17,389,736.00 add US$4,839,495.00) with peso equivalent of Php881,023,352.76 as computed below, qualifies for VAT zero-rating, viz:

Declared Zero-Rated Sales in Peso	2,166,288,788.31
Divided by Zero-rated Sales in US$	54,657,954.00
Average peso to dollar rate	39.6335506504
Multiplied by Substantiated Zero-rated Sales in US$	22,229,231.00

[41] Exhibit "F"
[42] Exhibit "F-1".
[43] Exhibit "F-1-a".
[44] Exhibits "E-4-b" to "E-10-b".
[45] Exhibits "E-4-c" to "E-10-c".
[46] Exhibits "E-4-a" to "E-10-a".
[47] Exhibits "E-4" to "E-10".

Substantiated Zero-Rated Sales in Peso	**881,023,352.76**

With the finding that petitioner has VAT zero-rated export sales for the first quarter of 2008 in the amount of US$22,229,231.00, with peso equivalent of Php881,023,352.76, the determination of the amount of input tax attributable thereto is in order.

In its Quarterly VAT Return[48] covering the first quarter of 2008, petitioner reflected an input VAT of Php11,921,092.00 on importations and an input VAT of Php966,413.59 on domestic purchases totaling to Php12,887,505.59, as shown below:

	Purchases	Input Tax
Importation of Goods other than Capital Goods	P 99,342,433.34	P 11,921,092.00
Domestic Purchase of Services	8,053,446.59	966,413.59
Total	**P 107,395,879.93**	**P 12,887,505.59**

In support of the above-mentioned input taxes, petitioner presented its Schedule of Input Taxes on Importations of Goods[49] and the related Import Entry and Internal Revenue Declarations (IEIRDs)[50], Bureau of Customs Official Receipts

[48] Exhibit "K-10".
[49] Exhibits "G" and "H".
[50] Exhibits "G-1-a" to "G-43-a" and "H-1" to "H-16".

(ORs) or bank debit advices[51], Schedule of Input Taxes on Domestic Purchases of Services[52], and the related suppliers' official receipts[53], all examined by the ICPA.

Per the ICPA's Report, the following input taxes in the total amount of Php10,689,981.62 should be disallowed from petitioner's claim for failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the NIRC of 1997, as amended by Republic Act No. 9337, and as implemented by Sections 4.110-8 and 4.113-1 of Revenue Regulations No. 14-05, to wit:

SUPPLIER	DATE	EXHIBIT NO.	INPUT VAT
1. Input VAT on importation of goods supported by original Bureau of Customs official receipts (BCORS) / bank debit advices (BDAS) and Import Entry and Internal Revenue Declarations (IEIRDS) dated outside period of claim[54].			
Fourth quarter of 2007			
ABB India	11/19/07	G - 26 / G - 26 –a	P 168,455.00
David Brown Gear Industries Limited	11/19/07	G - 27 / G - 27 – a	112,566.00
Viking Pump	11/22/07	G - 28 / G - 28 – a	13,359.00
Cubex Limited	11/26/07	G - 29 / G - 29 – a	136,305.00
Atlas Copco Rock Drills AB	11/28/07	G - 30 / G - 30 – a	29,645.00
Metso Minerals (Asia Pacific)	12/05/07	G - 31 / G - 31 – a	20,286.00
Sumitomo(SHI) Cyclo Drive Asia Pacific Ltd	12/07/07	G - 32 / G - 32 - a	238,875.00
Emerson Process Management	12/10/07	G - 33 / G - 33 - a	40,823.00
Mining Technologies Int'l Inc.	12/10/07	G - 34 / G - 34 - a	36,923.00
Normet Corporation	12/11/07	G - 35 / G - 35 - a	14,829.00
Metso Minerals Process Grin	12/13/07	G - 36 / G - 36 - a	33,008.00
Falk Australia Pty Ltd	12/13/07	G - 37 / G - 37 - a	154,196.00
Earnstead International	12/18/07	G - 38 / G - 38 - a	9,233.00
Twiflex Limited	12/19/07	G - 39 / G - 39 - a	15,636.00
Metso Minerals France SA	12/26/07	G - 40 / G - 40 - a	8,909.00
Metso Minerals Australia	12/27/07	G - 41 / G - 41 - a	117,127.00

[51] Exhibits "G-1" to "G-43".
[52] Exhibit "I".
[53] Exhibits "I-1" to "I-88".
[54] Exhibit "G", not dated in the current quarter-fourth quarter of 2007.

Metso Minerals Australia	12/27/07	G - 42 / G - 42 - a	125,061.00
Cubex Limited	12/27/07	G - 43 / G - 43 - a	31,038.00
		Subtotal	***P 1,306,274.00***
2. Input VAT on importation of goods supported by original Import Entry and Internal Revenue Declarations (IEIRDS) but without machine validation[55].			
Shin Caterpillar Mitsubushi Ltd.	01/07/08	H - 1	P 1,428,327.00
Alvenius Industries AB	01/10/08	H - 2	107,440.00
AIA Engineering Ltd.	01/10/08	H - 3	892,836.00
Nasaco International LLC	01/21/08	H - 4	136,847.00
Fuji Trading Co., Ltd.	01/21/08	H - 5	199,948.00
Boart Longyear Pty Ltd.	01/21/08	H - 6	299,624.00
AIA Engineering Ltd.	01/22/08	H - 7	755,615.00
AIA Engineering Ltd.	01/28/08	H - 8	891,178.00
Unionland International Limited	01/29/08	H - 9	260,947.00
AIA Engineering Ltd.	02/27/08	H - 10	1,011,726.00
Impala Plastics Pty Ltd.	03/04/08	H - 11	171,655.00
Metso Minerals (JHB)	03/04/08	H - 12	582,966.00
Artmark Associates, Inc.	03/05/08	H - 13	649,205.00
AIA Engineering Ltd.	03/05/08	H - 14	859,704.00
Ekof Flotation GMBH	03/05/08	H - 15	144,075.00
		Subtotal	***P 8,392,093.00***
3. Input VAT on importation of goods supported by original Import Entry and Internal Revenue Declarations (IEIRDS) dated outside period of claim[56].			
Viking Pump	12/12/07	H - 16	P 63,045.00
		Subtotal	***P 63,045.00***
4. Input VAT on domestic purchases of services supported by original VAT official receipts in the name of the petitioner but dated outside period of claim[57].			
Second Quarter of 2008			
Wealth Securities Inc.	04/01/08	I - 59	P 1,890.00
Wealth Securities Inc.	04/02/08	I - 60	3,588.48
Crowne Plaza Galleria Manila	04/25/08	I - 61	14,276.98
Second Quarter of 2008			**P 19,755.46**
Fourth quarter of 2007			
Sky Freight Forwarders Inc.	01/07/07	I - 62	1,842.32
Famous Pacific Forwarding Phils. Inc.	11/05/07	I - 63	1,495.03
International Container Terminal	11/15/07	I - 64	1,815.48
International Container Terminal	11/16/07	I - 65	57.76
Schenker Phils. Inc.	11/22/07	I - 66	216.00
DHL Global Forwarding (Phils.) Inc.	11/28/07	I - 67	410.76
Ceva Logistics Philippines Inc.	11/28/07	I - 68	675.14
DHL Global Forwarding (Phils.) Inc.	12/01/07	I - 69	108.00
Mercury Freight International Inc.	12/04/07	I - 70	249.60
ZIM Logistics Philippines Inc.	12/05/07	I - 71	1,121.40

[55] Exhibit "H", dated in the current quarter.
[56] Exhibit "H", not dated within the taxable quarter but dated within the taxable year.
[57] Exhibit "I", not dated in the current quarter-second quarter of 2008 and fourth quarter of 2007.

International Container Terminal	12/05/07	I - 72		885.93
Miascor Logistics Corporation	12/06/07	I - 73		214.67
All Tansport Network, Inc.	12/10/07	I - 74		538.80
DHL Global Forwarding (Phils.) Inc.	12/10/07	I - 75		108.00
Filsov Shipping Co. Inc.	12/11/07	I - 76		139.82
International Container Terminal	12/11/07	I - 77		400.48
Shoreline Marine Surveyors Co.	12/12/07	I - 78		128.57
DHL Express (Phils.) Corp.	12/12/07	I - 79		114.00
Philippines Skylanders Inc	12/13/07	I - 80		1,822.17
DHL Global Forwarding (Phils.) Inc.	12/13/07	I - 81		381.60
Airspeed International Corp.	12/13/07	I - 82		*198.00*
DHL Express (Phils.) Corp.	12/14/07	I - 83		66.40
Schenker Phils. Inc.	12/19/07	I - 84		108.00
Association of International Shipping	12/19/07	I - 85		16.07
International Container Terminal	12/19/07	I - 86		2,576.16
DHL Global Forwarding (Phils.) Inc.	12/26/07	I - 87		108.00
Philippines Skylanders Inc	12/28/07	I - 88		64.77
Fourth quarter of 2007			**P**	**15,862.92**
		Subtotal	***P***	***35,618.38***
5. Input VAT on domestic purchases of services with no supporting VAT official receipts[58].				
Dated in the current quarter				
Schenker Phils. Inc.			P	108.00
Mining Petroleum Services Corp.				117,817.11
United Phils. Drilling Co. Inc.				164,198.28
DHL Global Forwarding (Phils.) Inc.				108.00
United Philippines Drilling Co. Inc.				184,817.92
United Philippines Drilling Co. Inc.				41,942.82
United Philippines Drilling Co. Inc.				153,374.22
United Philippines Drilling Co. Inc.				193,896.24
		Subtotal	***P***	***856,262.59***
6. Input VAT was not separately indicated on the ORs supporting petitioner's domestic purchases.				
UTI (Global Logistics) Inc.	01/09/08	I - 3	P	144.00
Acestar International Service Corp.	01/16/08	I - 8		218.30
Warranted Safe Arrivals Phil. Inc.	01/16/08	I - 9		1,365.77
Airspeed International Corp.	01/16/08	I - 10		198.00
Association of International Shipping	01/22/08	I - 12		16.07
Association of International Shipping	01/23/08	I - 16		2.68
Association of International Shipping	01/25/08	I - 20		18.75
Transworld Brokerage Corp.	02/01/08	I - 28		196.80
Crowne Plaza Galleria Manila	02/08/08	I - 35		11,160.00
Ocean Link Container Terminal Center	02/08/08	I - 36		1,048.24
Sky Freight Forwarders Inc.	02/15/08	I - 40		1,048.25
Crowne Plaza Galleria Manila	02/21/08	I - 41		11,378.33
Negros Navigation Co.	02/27/08	I - 45		3,545.30
Association of International Shipping	02/27/08	I - 46		18.75
Sky Freight Forwarders Inc.	03/07/08	I - 53		327.04

[58] Exhibit "J".

Campos Lanuza Co. Inc.	03/31/08	I - 57		6,819.12
Campos Lanuza Co. Inc.	03/31/08	I - 58		6,240.00
		Subtotal	***P***	***30,425.03***
7. Input VAT on domestic purchases supported by NON VAT official receipts.				
Sky Freight Forwarders Inc.	01/25/08	I - 18	P	1,877.73
Sky Freight Forwarders Inc.	03/28/08	I - 56		4,191.79
		Subtotal	***P***	***6,069.52***
8. Discrepancy between Input VAT per claim and Input VAT per supporting VAT OR.				
Peoples Air Cargo and Warehousing Co. Inc.	02/27/08	I - 47		
per claim			P	370.25
per supporting				(176.15)
		Subtotal	***P***	***194.10***
		Grand Total	**P**	**10,689,981.62**

From the foregoing table, only the amount of Php2,197,523.97 (Php12,887,505.59 less Php10,689,981.62) representing petitioner's valid input tax attributable to its declared zero-rated sales for the first quarter of 2008 may be claimed for refund or TCC.

However, a portion of the substantiated input tax of Php2,197,523.97 shall be applied against petitioner's reported output VAT liability of Php403,320.59[59]. Consequently, only the remaining input VAT of Php1,794,203.38 can be attributed to the entire zero-rated sales of Php2,166,288,788.31 and only the input VAT of Php729,697.30 is attributable to the substantiated zero-rated sales of Php881,023,352.76, computed as follows:

[59] Exhibit "K-10", Line 15B.

Substantiated Input VAT	P 2,197,523.97
Less: Output Tax for the 1st Quarter	403,320.59
Excess Input Tax attributable to zero-rated sales	**P 1,794,203.38**
Substantiated Zero-rated Sales	P 881,023,352.76
Divided by Total Reported Zero-Rated Sales	2,166,288,788.31
Multiplied by Substantiated Excess Input VAT	1,794,203.38
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	**P 729,697.30**

Finally, petitioner's Quarterly VAT Returns[60] from the second quarter of 2008 to the first quarter of 2010 proved that the input VAT of Php1,794,203.38 was not applied against any output VAT in the succeeding quarters. Even though petitioner carried over the claimed unutilized input VAT for the first quarter of taxable year 2008 to the succeeding second quarter of 2008 until the fourth quarter of 2009, the same was deducted as "Any VAT Refund/TCC Claimed"[61] from the total available input tax of Php119,712,651.93 in the fourth quarter of 2009. In other words, the subject claim no longer formed part of the excess input VAT of Php105,894,938.55[62] as of the fourth quarter of 2009, which was carried over to the succeeding first quarter of 2010.[63]

[60] Exhibits "K-11" to "K-18".
[61] Exhibit "K-17", line 23D.
[62] Exhibit "K-17", line 29.
[63] Exhibit "K-18".

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **SEVEN HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED NINETY-SEVEN PESOS AND THIRTY CENTAVOS (Php729,697.30),** representing the latter's excess/unutilized input tax attributable to substantiated zero-rated sales for the first quarter of 2008.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ON LEAVE
ERLINDA P. UY
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's Division.

ERNESTO D. ACOSTA
Presiding Justice