REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	**C.T.A. CASE NO. 8284**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 30 2012 2:25 p.m.

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DECISION

CASANOVA, *J.*:

The Petition for Review[1], filed by petitioner, Philex Mining Corporation, seeks the refund of the amount of P14,117,705.07 representing petitioner's excess/unutilized input taxes for the fourth quarter of 2008.

Petitioner 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.[2]

Respondent is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund or

[1] Docket, pp. 000007-000011
[2] Stipulation of Facts and Issues ("SFI"), par. 1, Summary of Facts Admitted, Docket, p. 40

tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code, with address at BIR National Office, Diliman, Quezon City.[3]

The facts of the case, as culled from the records, are as follows:

Petitioner is VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1997, under BIR Form No. 2303 as of January 31, 1997. Petitioner, likewise, had its Application for Zero-Rate, pursuant to Sec. 4.100-3 of Revenue Regulations No. 7-95, approved effective April 12, 1998.[4]

On March 11, 2004, petitioner entered into a Long Term Gold and Copper Concentrates Sales Agreement[5] with Pan Pacific Copper Co., Ltd. of Tokyo, Japan for the sale by petitioner to Pan Pacific of copper concentrates starting April 1, 2004. Petitioner made four (4) shipments of its mineral products to its foreign buyers for the 4th quarter of 2008 in the total sales amount of US$53,174,409.[6]

On January 23, 2009, petitioner filed its original VAT return for the 4th quarter of 2008 and, subsequently on April 27, 2011, its Amended VAT Return which reflected the following: [7]

Total zero-rated sales		P1,453,670,679.21
Importation of goods		116,240,301.67
Input Tax	P13,948,836.20	
Purchases of services		1,407,240.59
Input Tax	P 168,868.87	

[3] "SFI", par. 2, Summary of Facts Admitted, Ibid
[4] "SFI", Summary of Facts Admitted, par. 3, Ibid
[5] Exhibit "B"
[6] Memorandum for the Petitioner, The Facts, par. 2, Docket, p. 78
[7] "SFI", Summary of Facts Admitted, par. 4, Docket, p. 41

Petitioner filed its administrative claim for refund/tax credit with the One Stop Shop Center (OSS) of the Department of Finance on December 8, 2010 for the amount of P14,117,705.07, per Application No. 62464.[8]

To protect its rights and interest due to respondent's inaction on its claim for refund/tax credit, petitioner filed the instant Petition for Review on May 3, 2011, for its claim covering the 4th quarter of 2008.

In her Answer[9], filed on May 27, 2011, respondent interposed the following Special and Affirmative Defenses:

> "4. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by the respondent;
>
> 5. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 6. Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with the following, viz:
>
>> A. The registration requirements of a Value-Added taxpayer under the pertinent provision of the National Internal Revenue Code (NIRC) of 1997, 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 Section 113 and 114 of the National Internal Revenue Code (NIRC) of 1997, 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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[8] "SFI", Summary of Admitted Facts, par. 2, Docket, p. 41
[9] Docket, pp. 24-27

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

D. That the input taxes of P14,117,705.07 allegedly representing excess and unutilized input taxes for the 4^{th} Quarter of 2008, were:

1. Paid by petitioner;
2. Attributable to its zero-rated or effectively zero-rated sales; and
3. Such input taxes paid should not have been applied against any output tax.

E. The petitioner's claim for tax refund allegedly representing excess and unutilized input taxes for the 4^{th} Quarter of 2008 in the amount of P14,117,705.07 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 National Internal Revenue Code (NIRC) of 1997, as amended.

7. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims and of showing, by words too plain to be mistaken, that the legislative intended to exempt them;

8. And finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictisisimi juris* against the entity claiming the same. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

On July 19, 2011, the parties filed their Stipulation of Facts and Issues[10] which was subsequently approved by this Court per its Resolution promulgated on July 20, 2011.[11]

After presentation of its evidence, petitioner filed its Formal Offer of Evidence[12] on December 13, 2011, which was admitted by the Court except for Exhibits "F-2-a" and "F-5-a" which were denied admission for not being found in the records of the case.

Respondent, having manifested that she will not be presenting evidence, this Court issued a Resolution[13] on February 29, 2012 ordering both parties to submit their respective Memorandum within thirty (30) days from the hearing of February 29, 2012.

On March 23, 2012, petitioner filed its Memorandum For the Petitioner[14] while respondent filed her Memorandum[15] on March 30, 2012.

In a Resolution[16] promulgated on April 3, 2012, the case was submitted for decision.

The lone issue jointly stipulated by the parties for resolution of this Court is:

> "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 P14,17,705.07 *(sic)* for the 4th quarter of 2008."[17]

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[10] Docket, pp. 40-41
[11] Ibid, p. 43
[12] Ibid. pp. 66-69
[13] Ibid, p. 75
[14] Ibid, pp. 77-91
[15] Ibid, pp. 92-96
[16] Ibid. p. 97
[17] "SFI", Statement of Issue, Docket, p. 41

Upon consideration of the findings, disallowances and recommendation of the Court-commissioned independent Certified Public Accountant (ICPA), petitioner prays for the reduced amount of claim of P2,567,435.71 in its Memorandum For the Petitioner filed on March 23, 2012. Thus, this Court will consider the reduced amount as the subject claim of this Petition for Review.

Petitioner contends that the legal basis for its claim for refund is Section 112(A) of the National Internal Revenue Code (NIRC) of 1997.

Section 112(A) of the NIRC of 1997, provides:

"SEC. 112. **Refund of 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 issuance of a tax credit certificate or a 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 *Banko 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: x x x"

The above-quoted provision lays down the requirements for the issuance of tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated sales which must be complied with by the taxpayer-claimant, to wit:

1. the taxpayer is VAT-registered;

2. the taxpayer is engaged in sales which are zero-rated or effectively zero-rated;

3. the creditable input tax due or paid must be attributable to such sales and were not applied against output VAT liability;

4. the foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations;

5. the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made.

With regard to the first requirement, the same is one of the facts admitted by the parties in their duly approved and admitted Stipulation of Facts and Issues.

Petitioner's VAT return for the 4th quarter of 2008 reflected zero-rated export sales in the total amount of P1,453,670,679.21[18]. The Court-commissioned ICPA, Mr. Albert G. Alba, noted that this export sale has a US dollar value of US$29,385,558.00[19], broken down as follows:

Provisional Billings for direct export sales of copper to Japan	US$ 53,174,409.00
Adjustments to previous quarters' provisional billings	(23,788,851.00)
	US$ 29,385,558.00

Petitioner claims that its shipments and sales of mineral products to Pan Pacific Copper Co. of Tokyo, Japan, a foreign buyer are zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. The said section reads as follows:

"SEC. 106. Value-Added Tax on Sale of Goods or Properties.—

'(A) Rate and Base of Tax.—

[18] Line 17, Exhibit "L-2"
[19] Exhibit _____

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)."

The said provision, however, should not be taken in isolation but should be read in conjunction with Section 113 of the same Code as implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005.

Thus, pursuant to the above-quoted provisions, in relation to Section 113(A)(1), (B)(1)(2)(C)[20] of the same Code and Sections 4.113-1(A)(1), B(1) and (2)(C)[21] of Revenue Regulations No. 16-2005, any VAT-registered person

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[20] Sec. 113(A)(1), (B)(1), (2), (C) of NIRC of 1997, as amended

"**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

"(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

"**(B) Information Contained in 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; xxx"

[21] Sec. 4.113-1 of Revenue Regulations No. 16-2005

"**SEC. 4.113-1. Invoicing Requirements.** —

(A) A VAT-registered person shall issue the following:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

(B) Information contained in VAT invoice or official receipt. – The following information shall be indicated in VAT invoice or VAT official receipts:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (a) the sales invoice as proof of sale of goods; (b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In addition to the above requirements, the sales invoices supporting the export sales must be registered with the Bureau of Internal Revenue and contain all the required information under Section 237[22] in relation to Section 238[23] of the NIRC of 1997 such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Pursuant to its Long Term Gold and Copper Concentrate Sales Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan[24], for the period covering the fourth quarter of 2008, petitioner actually shipped mineral products to Pan Pacific

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(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%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt; xxx"

22 "**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 (₱25) 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…."

23 "**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."

24 Exhibit "B"

Copper, Ltd. of Tokyo, Japan and generated export sales, as shown in petitioner's Schedule of Export Sales[25] and various export documents.

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 90% of the estimated value of the shipment and the second is the Final Invoice which petitioner issues only after it and its buyer have reached an agreement regarding the final settlement 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.[26]

In other words, the considered date of the sale transaction is the shipment date indicated in the bill of lading. Considering that the bill of lading covering export sales of US$53,174,409.00 were all dated within the fourth quarter of 2008, the related final invoices which carry dates much later than the dates when the sales or shipments were made, are deemed valid.

To substantiate its export sales for the 4th quarter of taxable year 2008 and that the foreign exchange proceeds thereof were duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), petitioner proffered its provisional invoices[27], final invoices[28], bills of

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[25] Exhibit "E"
[26] Clause of Exhibit "B"
[27] Exhibits "E-1-b" to "E-4-b"
[28] Exhibits "E-1-c" to "E-4-c"

lading[29], export declarations[30], certificates of inward remittances[31], and passbook pages showing amounts and dates of remittances[32].

Likewise, the foreign currency proceeds derived from said export sales were inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas as evidenced by the bank certifications issued by petitioner's banks[33] and entries in petitioner's passbooks in local banks of the payments received.[34]

As to adjustments to correct billings for the previous quarter's shipments in the amount of negative US$23,788,851.00, this Court finds the adjustments proper as shown by provisional[35] and final invoices[36], bills of lading[37] and export declarations[38] submitted by petitioner.

In fine, petitioner's export sales for the fourth quarter of 2008 in the amount of US$29,385,558 with the peso value equivalent to P1,453,670,679.21 qualify for VAT zero-rated rating.

We shall now proceed to determine whether or not petitioner incurred or paid input taxes in connection with its zero-rated export sales and if said input taxes were not applied against any output VAT liability of petitioner.

[29] Exhibits "E-1-a" to "E-4-a"
[30] Exhibits "E-1" to "E-4"
[31] Exhibits "F-1" to "F-6"
[32] Exhibits "F-1-a" to "F-6-a"
[33] Exhibits "F-1" to "F-7"
[34] Exhibits "F-1-a" to "F-6-a"
[35] Exhibits "E-5-b" to "E-12-b"
[36] Exhibits "E-5-c" to "E-12-c"
[37] Exhibits "E-5-a" to "E-12-a"
[38] Exhibits "E-5" to "E-12"

Petitioner's amended VAT return for the 4th quarter of 2008[39] reflected an input VAT of P13,948,836.20 on importations and input VAT of P168,868.87 on domestic purchases of services totaling to P14,117,705.07, as shown below:

	Purchases	**Input Tax**
Importations - Goods other than Capital Goods	₱ 116,240,301.67	₱ 13,948,836.20
Domestic Purchase of Services	1,407,240.59	168,868.87
Total	**₱ 117,647,542.26**	**₱ 14,117,705.07**

However, the total input VAT of P13,948,836.20 on importations includes the amount of P11,510,182.20, as computed below, representing amortization of input taxes on importation of capital goods from the fourth quarter of 2006 to fourth quarter of 2007 which has been previously filed with this Court for refund or issuance of a tax credit certificate, thus constitute a double claim:

Input taxes paid on importation of capital goods	
4th quarter of 2006	₱ 7,854,823.00
1st quarter 2007	13,783,800.00
2nd quarter 2007	13,391,381.00
3rd quarter 2007	12,378,170.00
4th quarter 2007	10,142,737.00
Total	₱ 57,550,911.00
Five-year amortization period in months	60.00
Monthly amortization	₱ 959,181.85
No. of months in a year	12.00
	₱ 11,510,182.20

Thus, petitioner's recomputed input VAT claim on importations for the fourth quarter of 2008 amounts to P2,438,654.00 (P13,948,836.20 less P11,510,182.20), which may be further broken down as follows:

Particulars	**Amount**
Input taxes paid on importation:	
a Supported by original BCORs/BDAs and IEIRDs (Exhibits G-1 to G-30-a)	
1. Dated in the current 4th quarter of 2008	₱ 1,466,924.00
2. Out of period receipts dated 3rd qtr of 2008	754,215.00
	₱ 2,221,139.00

[39] Exhibit "L-2"

b	Supported by original BCORs/BDAs only (Exhibits H-1 to H-5)	
	1. Dated in the current 4th quarter of 2008	128,125.00
	2. Out of period receipts dated 3rd qtr of 2008	79,462.00
		₱ 207,587.00
c	No supporting BCORs or IEIRDs	**9,928.00**
	TOTAL	**₱ 2,438,654.00**

As regards the input taxes on domestic purchases, the Court-commissioned ICPA noted the following findings[40]:

	Particulars		
a.	Original VAT official receipts (Exhibits J-1 to J-126		
	1	Dated in the current 4th quarter of 2008	₱ 111,717.79
	2	Out of period receipts dated 3rd qtr of 2008	31,343.72
			₱ 143,061.51
b.	No supporting VAT official receipts		25,807.36
	TOTAL		**₱ 168,868.87**

Based on the above ICPA's findings, petitioner's claim in the amount of P900,756.08 shall be disallowed outright for the reasons summarized as follows:

	Particulars	**Importation**	**Domestic**	**Total**
a	Supported by original BCORs/BDAs and IEIRDs dated 3rd quarter of 2008	₱ 754,215.00		**₱ 754,215.00**
b	Supported by original BCORs/BDAs only dated 3rd quarter of 2008	79,462.00		**79,462.00**
c	Supported by original VAT official receipts dated 3rd quarter of 2008		₱ 31,343.72	**31,343.72**
c	No supporting documents	9,928.00	25,807.36	**35,735.36**
	TOTAL	**₱ 843,605.00**	**₱ 57,151.08**	**₱ 900,756.08**

Moreover, after a scrutiny of the documents (such as the Schedule of Input Taxes on Importation of Goods[41] and the related Import Entry and Internal Revenue Declarations (IEIRD's), Bureau of Customs Official Receipts or bank debit advices[42], Schedule of Input Taxes on Domestic Purchases of Services[43] and

[40] Exhibit "D", page 5
[41] Exhibit "G"
[42] Exhibits "G-1" to "G-30", "G-1-a" to "G-30-a", "H-1" to "H-5"
[43] Exhibit "J"

the related suppliers' official receipts[44]) supporting the remaining input taxes of P1,706,766.79 (P2,438,654.00 plus P168,868.87 less P900,756.08) this Court finds that the following input taxes 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, and as implemented by Sections 4.110-8 and 4.113-1 of Revenue Regulations No. 16-2005:

		Supplier	Input VAT	Exhibits
1)	**1) Input Taxes on Importation of Goods Supported by Original BOC OR's or Bank Debit Advices Only**			
	The amount of VAT of which cannot be determined	DFC Ceramics	P32,668.00	"H-1"
	Not dated	Mining Technologies Int'l Inc.	1,184.00	"H-4"
	Sub-total		**P33,852.00**	
2)	**Input Taxes on Domestic Purchases of Services supported by documents other than official receipts**			
	Supported by Cash Transaction Billing Invoice	Asian Terminal Inc.	P 86.63	"J-6"
	Supported by Cash Transaction Billing Invoice	Asian Terminal Inc.	400.48	"J-7"
	Supported by Cash Transaction Billing Invoice	Asian Terminal Inc.	288.78	"J-13"
	Supported by Cash Transaction Billing Invoice	Asian Terminal Inc.	400.48	"J-14"
	Sub-total		**P1,176.37**	
	Supported by Clearance	Assoc. Of International Shipping Lines	P 16.07	"J-16"
	Supported by Clearance	Assoc. Of International Shipping Lines	18.75	"J-17"
	Supported by Clearance	Assoc. Of International Shipping Lines	5.36	"J-18"
	Supported by Clearance	Assoc. Of International Shipping Lines	16.07	"J-39"
	Supported by Clearance	Assoc. Of International Shipping Lines	18.75	"J-40"
	Supported by Clearance	Assoc. Of International Shipping Lines	2.68	"J-55"
	Supported by Clearance	Assoc. Of International Shipping Lines	16.07	"J-78"
	Supported by Clearance	Assoc. Of International Shipping Lines	18.75	"J-79"
	Supported by Clearance	Assoc. Of International Shipping Lines	90.00	"J-80"
	Sub-total		**P 202.50**	
	Supported by Invoice	Expeditors Philippines Inc.	942.01	"J-66"
	Sub-total		**942.01**	
	TOTAL		**P36,172.88**	

Therefore, only the remaining claim in the amount of P1,670,593.91 (P1,706,766.79 less P36,172.88) represents petitioner's substantiated input tax

[44] Exhibits "J-1" to "J-126"

which is attributable to its zero-rated sales for the 4th quarter of 2008, tabulated herein below for easy reference:

	Input VAT on Importation	Input VAT on Domestic Purchases	Total
Input VAT claimed	₱ 2,438,654.00	₱ 168,868.87	₱ 2,607,522.87
Outright disallowances	843,605.00	57,151.08	900,756.08
Total	₱ 1,595,049.00	₱ 111,717.79	₱1,706,766.79
Additional Disallowances	33,852.00	2,320.88	36,172.88
Substantiated Input VAT	**₱ 1,561,197.00**	**₱ 109,396.91**	**₱1,670,593.91**

Not all of the substantiated input VAT claim of P1,670,593.91, however, is refundable.

Pursuant to Section 110(A) of the NIRC of 1997, as amended, in relation to Section 4.110-3 of RR No. 16-2005, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost, excluding the VAT component thereof, of the capital goods in the calendar month. If the aggregate acquisition cost exceeds P1 Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if the aggregate acquisition cost does not exceed P1 Million, the total input taxes will be allowable as credit in the month of acquisition.

Records show that the substantiated input VAT on importation in the amount of P1,561,197.00, pertains to petitioner's purchases of capital goods, the aggregate acquisition of which exceeded P1 Million in the calendar month except for the month of December for purchases amounting to P855,141.67 with the related input VAT of P102,617.00. Thus, the input VAT of P1,458,580.00 shall be spread over 60 months while the input VAT for December in the amount of P102,617.00 shall be allowable for refund/credit in full. Consequently, out of the P1,561,197.00 input VAT incurred by petitioner on capital goods, only the amount of P169,169.32 is creditable or refundable as of December 31, 2008, computed as follows:

						Allowable Input VAT		
Date	**Exhibit**	**Supplier**	**Amount**	**Input VAT**	**Life**	**Month of Acquisition**	**Remaining Months (2008)**	**Total**
(2008)								
15-Oct	G-1,G-1-a	INDL Technomasters INC.	₱ 96,683.33	₱ 23,602.00	60	₱ 393.37	₱ 786.73	₱ 1,180.10
21-Oct	G-2,G-2-a	JVSP Marketing Corp. Branch	1,298,825.00	155,859.00	60	2,597.65	5,195.30	7,792.95
21-Oct	G-3,G-3-a	Phoenix Conveyor Belt System	4,426,908.33	531,229.00	60	8,853.82	17,707.63	26,561.45
22-Oct	G-4,G-4-a	JVSP Marketing Corp. Branch	2,482,350.00	297,882.00	60	4,964.70	9,929.40	14,894.10
24-Oct	G-5,G-5-a	Metritape Inc.	347,258.33	41,671.00	60	694.52	1,389.03	2,083.55
27-Oct	G-6,G-6-a	Mining Technologies Int'l. Inc.	129,766.67	15,572.00	60	259.53	519.07	778.60
30-Oct	G-7,G-7-a	Indioator Company	84,700.00	10,164.00	60	169.40	338.80	508.20
		Total for October 2008	**₱8,966,491.66**	**₱1,075,979.00**				**₱53,798.95**
7-Nov	G-8,G-8-a	Varian Australia PTY LTD	₱ 307,866.67	₱ 36,944.00	60	₱ 615.73	₱ 615.73	₱ 1,231.47
11-Nov	G-9,G-9-a	Metritape Inc.	342,366.67	41,084.00	60	684.73	684.73	1,369.47
13-Nov	G-10,G-10-a	Equipos Mineros S.A.	381,408.33	45,769.00	60	762.82	762.82	1,525.63
14-Nov	G-11,G-11-a	AESCO International PTE LTD.	427,966.67	51,356.00	60	855.93	855.93	1,711.87
16-Nov	G-12,G-12-a	Metritape Inc.	338,250.00	40,590.00	60	676.50	676.50	1,353.00
17-Nov	G-13,G-13-a		206,375.00	24,765.00	60	412.75	412.75	825.50
18-Nov	G-14,G-14-a	Sepor Inc.	59,808.33	7,177.00	60	119.62	119.62	239.23
19-Nov	G-15,G-15-a	Hooks Industrial Inc.	251,558.33	30,187.00	60	503.12	503.12	1,006.23
21-Nov	G-16,G-16-a	Boart Longyear PTY LTD	168,041.67	20,165.00	60	336.08	336.08	672.17
24-Nov	G-17,G-17-a	DFC Ceramics	421,558.33	50,587.00	60	843.12	843.12	1,686.23
24-Nov	G-18,G-18-a	Equipos Mineros S.A.	253,050.00	30,366.00	60	506.10	506.10	1,012.20
26-Nov	H-2	AESCO International PTE LTD.	30,091.67	3,611.00	60	60.18	60.18	120.37
		Total for November 2008	**₱3,188,341.67**	**₱ 382,601.00**				**₱12,753.37**
11-Dec	G-19,G-19-a	SYCWIN Coating and Wires Inc.	₱ 99,625.00	₱ 11,955.00		₱ 11,955.00		₱11,955.00
12-Dec	H-3	Onesteel Wire Pty Limited	755,516.67	90,662.00		90,662.00		90,662.00
		Total for December 2010	**₱ 855,141.67**	**₱ 102,617.00**				**₱102,617.00**
		TOTAL	**₱13,009,975.00**	**₱1,561,197.00**				**₱169,169.32**

In addition, the input VAT on domestic purchases found to be fully substantiated and not exceeding P1 Million in the amount of P109,396.91 is likewise refundable/creditable in full.

However, a portion of the substantiated and amortized input VAT on domestic purchases and importations of P278,566.23 (P169,169.32 plus P109,396.91) shall be applied against petitioner's reported output VAT liability of P4,285.72[45]. Consequently, only the remaining input VAT of P274,280.51 can be attributed to the entire zero-rated sales declared and substantiated by petitioner, as herein below computed:

Substantiated and amortized input VAT	
Importation	₱169,169.32
Domestic purchases	109,396.91
Total	**₱278,566.23**
Less: Output VAT	4,285.72
Refundable Input VAT attributable to zero-rated sales	**₱274,280.51**

As evidenced by its Quarterly VAT Returns from the 3rd quarter of 2008[46] to 2nd quarter of 2010[47], petitioner was able to prove that the input VAT of P274,280.51 was not applied against any output VAT in the succeeding quarters. While petitioner carried over the claimed unutilized input VAT for the 4th quarter of 2008 to the succeeding quarters until the 2nd quarter of 2010, the same was deducted as "Any VAT Refund/TCC Claimed"[48] from the total available input tax of P263,182,399.19[49] in the 2nd quarter of 2010.

[45] Line 15B, Exhibit "L-2"
[46] Exhibit "L-1"
[47] Exhibit "L-8"
[48] Exhibit "L-8 Line 23D"
[49] Exhibit "L-8 Line22"

We shall now determine the timeliness of the filing of petitioner's administrative and judicial claims.

The present claim pertains to the input VAT incurred for the fourth quarter of CY 2008. Under Section 112(A) of the NIRC of 1997:

> "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. x x x."

From December 31, 2008, the close of the taxable quarter covering the fourth quarter of CY 2008, petitioner had until December 31, 2010, within which to file its administrative claim. Thus, petitioner's administrative claim for refund/tax credit, filed on December 8, 2010, with the One-Stop Shop Center (OSS) of the Department of Finance under Application No. 62464[50] for the amount of P14,117,705.07, was timely filed. Going now to the timeliness of the filing of petitioner's judicial claim, Section 112(C) [formerly Sec. 112(D)] of the NIRC of 1997, provides thus:

> "**Sec. 112. Refunds or Tax Credits of Input Tax. –**
>
> (A) x x x.
>
> (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

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[50] Exhibit "M"

> 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."

Pursuant to the above provision, the 120-day period commences to run on December 8, 2010 and will expire on April 7, 2011. Upon denial of the claim or the expiration of the 120-day period without any action by the commissioner thereon, only then may the taxpayer-claimant seek judicial recourse to appeal the commissioner's action or inaction on a refund/tax credit claim within a period of 30 days therefrom or until May 7, 2011. Thus, petitioner's judicial claim, the instant Petition for Review, filed on May 3, 2011, was seasonably filed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of P274,280.51 representing its unutilized input VAT for the 4th quarter of 2008.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice