

WDO -PJ
REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILEX MINING CORPORATION,
Petitioner,

C.T.A. CASE NO. 7720

Members:

- versus -

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

Respondent.

JUL 12 2010; 11:34am

X -----X

DECISION

CASANOVA, J.:

Before Us is a Petition for Review filed on January 17, 2008 seeking the refund, in favor of the petitioner, of its excess and unutilized input value added taxes for the fourth quarter of 2005 in the amount of P10,591,686.58.

As stipulated by the parties and borne by the records, the facts of this case are as follows:¹

Petitioner is a domestic corporation duly organized and existing under Philippine laws with principal office at No. 27 Brixton St., Pasig City.² It is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products.³ Likewise, it is

¹ Stipulation of Facts of the *Joint Stipulation of Facts and Issues*, Docket, p. 70.

² Stipulation of Facts and Issues, Par. 2, Docket, p. 83

³ Stipulation of Facts and Issues, Par. 3, Docket, p. 83

VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987⁴ and under BIR Form No. 2303 as of January 31, 1997⁵. Petitioner also had its Application for Zero-Rate⁶, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95, approved effective April 12, 1998.⁷

Petitioner filed its original VAT return for the 4th quarter of 2005 on January 24, 2006.⁸ On May 22, 2006, an amended VAT return was filed by the petitioner which reflected total zero-rated sales of P1,404,851,639.25, domestic purchase of goods of P301,735.80 with input tax of P30,173.58, and importation of goods of P105,615,130.00 with input tax of P10,561,513.00.⁹

According to petitioner, it is entitled to the refund of the total excess or unutilized input VAT of P10,591,686.58 for the fourth (4th) quarter of 2005, invoking Section 112(A) of the National Internal Revenue Code.¹⁰

Hence, petitioner filed its claim for refund/tax credit as per Application No. 54763 with the One Stop Shop Center of the Department of Finance on June 20, 2007 pursuant to Section 4.106-2 of Revenue Regulations No. 7-95 for the amount of P10,591,686.58¹¹. The filing is well within the two-year period prescribed in Section 112 of the Tax Code.¹²

On January 17, 2008, the instant Petition for Review was filed due to respondent's inaction on the administrative claim for refund filed by the petitioner.¹³ 

⁴ Petition for Review, Annex "A", Docket, p. 6

⁵ Petition for Review, Annex "A-1", Docket, p. 7

⁶ Petition for Review, Annex "A-2", Docket, p. 8

⁷ Stipulation of Facts and Issues, Par. 4, Docket, p. 63

⁸ Exhibit "B"

⁹ Exhibit "B-1"

¹⁰ Petition for Review, Par. 11, Docket, p. 3

¹¹ Petition for Review, Annex "C", Docket, p. 13

¹² Stipulation of Facts and Issues, Par. 6, Docket, p. 84

¹³ Petition for Review, Docket, pp. 1-16

In her Answer¹⁴ filed on March 28, 2008, respondent interposed the following

Special and Affirmative Defenses:

- "4. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent's Bureau;
5. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected;
6. Taxes collected are presumed to be in accordance with laws and regulations;
7. Petitioner's claim for refund has prescribed already in view of Section 112(C) of the Tax Code which provides that:

'Section 112. Refunds or Tax Credits of Input Tax-

(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'-(Italics supplied)

Hence, when petitioner filed its administrative claim for refund with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance on 20 June 2007, the OSS-DOF has 120 days within which to decide on petitioner's claim for tax refund/credit. And in case of full or partial denial of the claim or failure of the OSS-DOF to act on the application within the 120 day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, the OSS-DOF has to render a decision within 120 days or until 18

¹⁴ Docket, pp. 36-41

October 2007 from 20 June 2007. In the event that the OSS-DOF failed to act upon petitioner's claim for tax refund/credit, petitioner has 30 days from 18 October 2007 or until 19 November 2007 to appeal the unacted claim with the Court of Tax Appeals. Petitioner filed the instant Petition for Review with the Court of Tax Appeals only on 17 January 2008, almost two months after the lapse of the period allowed by law to file the judicial claim for tax refund/credit with the Court of Tax Appeals. This being so, it is safe to conclude that the instant petition for review was filed out of time.

8. Assuming for the sake of argument that the subject claim for refund has not yet prescribed, it is imperative for the 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 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 Tax Code 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);
 - c. The submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (A) and (C) of the Tax Code of 1997, as amended;
 - d. That the input taxes of P10,591,686.58 allegedly representing unutilized input VAT from its local and foreign purchases of goods and services were:
 - i. paid by the petitioner
 - ii. attributable to its zero-rated sales; and,
 - iii. such input taxes paid should not have been applied against any output tax;

- e. That petitioner's claim for tax credit or refund of unutilized input tax (VAT) in the amount of P10,591,686.58 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 Tax Code of 1997, as amended.

Petitioner in the instant case failed to prove compliance with the above-mentioned requirements, hence, the claim for refund should be denied.

9. Furthermore, where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, properties, or be directly and entirely attributed to any one of the transactions, *only the proportionate share* of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate. (*Section 4.112-1 Revenue Regulation N. 16-2005*);
10. In an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund;
11. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed in *strictissimi juris* against the entity claiming the same (*Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005*). 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 exemptions 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 (*Sea-Land Service, Inc., vs. Court of Appeals, 357 SCRA 444*)."

Subsequently, a "Notice of Pre-trial Conference"¹⁵ was issued by this Court on March 31, 2008 requiring both parties and their counsels to file with the Court and serve on the adverse party their respective pre-trial briefs. Respondent and 

¹⁵ Docket, p. 44

petitioner thereafter complied with the said notice by filing their pre-trial briefs on April 4, 2008 and April 14, 2008 respectively.¹⁶

On May 20, 2008, both parties filed their "Stipulation of Facts and Issues"¹⁷ which was approved by this Court in a Resolution dated May 22, 2008. The same Resolution¹⁸ considered the pre-trial terminated and thereby ordered the parties to proceed with the trial for petitioner's initial presentation of evidence.

During trial, petitioner availed of the services of an Independent Certified Public Accountant (CPA) pursuant to Rule 13 of the Revised Rules of the Court of Tax Appeals due to the voluminous nature of evidence to be presented.¹⁹ Consequently, Mr. Albert G. Alba was appointed as Independent CPA and thereafter submitted his report on July 9, 2008.²⁰

Petitioner presented its documentary and testimonial evidence to support its claim. On December 12, 2008, petitioner formally offered before this Court Exhibits "A" to "J-9-a"²¹ which were admitted by virtue of a Resolution²² issued on February 4, 2009. On the other hand, respondent was deemed by this Court to have waived his right to present evidence for failure of her counsel to appear during the hearing held on May 14, 2009 despite warning.²³

¹⁶ Docket, pp. 45-49; pp. 58-62

¹⁷ Docket, pp. 83-85

¹⁸ Resolution dated May 22, 2008, Docket, p. 87

¹⁹ Docket, p. 71

²⁰ Docket, p. 92 & pp. 98-119

²¹ Docket, pp. 140-144

²² Resolution dated February 4, 2009, Docket pp. 145-146

²³ Resolution dated May 22, 2009, Docket p. 160

On July 13, 2009, this case was submitted for decision taking into consideration the "Memorandum for the Petitioner", filed on June 4, 2009, and "Respondent's Memorandum", filed on July 10, 2009.²⁴

The parties' stipulated issues²⁵ are as follows:

- "1. Whether or not Petitioner's judicial claim for tax refund filed with this Honorable Court has already prescribed;
2. Whether or not Petitioner has been able to comply with the following requisites prescribed by Section 112(A) of the Tax Code to be entitled to a refund/tax credit of unutilized input VAT:
 - a. there must be zero-rated or effectively zero-rated sales
 - b. that input taxes were incurred or paid
 - c. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales
 - d. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
 - e. that the claim for the refund was filed within the two-year prescriptive period.
3. Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas;
4. Whether or not Petitioner is entitled to the refund of the excess input taxes in the total amount of P10,591,686.58 for the 4th quarter of 2005 due to Petitioner being a producer and exporter of mineral products."

²⁴ Resolution dated July 13, 2009, Docket p. 195

²⁵ Stipulation of Facts and Issues, Docket, pp. 34-35

The main controversy for this Court's disposition is "Whether or not petitioner is entitled to a tax refund or issuance of a tax credit certificate of petitioner's alleged excess input taxes in the total amount of P10,591,686.58 for the 4th quarter of 2005."

Petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code of 1997, as amended, which provides:

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

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two(2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sales 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."

From the foregoing, petitioner maybe entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales only upon 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 VAT are attributable to zero-rated or effectively zero-rated sales
4. that the input VAT were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for the refund was filed within the two-year prescriptive period.

As to the first requisite, the Court-commissioned Independent CPA, Mr. Albert G. Alba, noted in his Amended Report²⁶ dated October 8, 2008 that petitioner's zero-rated export sales amounting to US\$26,081,924.00 with peso equivalent of P1,404,851,639.25, as reported in petitioner's Amended VAT Return for the 4th quarter of 2005²⁷, were as follows:

Current Quarter's Shipments	
Provisional billings for direct export of copper to Japan	US\$23,972,358.00
Previous Quarters' Shipments	
Adjustments to quarters' provisional billings	2,109,566.00
Total Zero-rated Sales	US\$26,081,924.00

Petitioner claims that its shipments and sales of copper concentrates to Pan Pacific Copper Co., Ltd. of Tokyo, Japan are VAT zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

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

(A) Rate and Base of Tax. -- xxx

xxx

(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);

Thus, in order for an export sale to qualify as VAT zero-rated, the following conditions must be present: ✓

²⁶ Exhibit "E"

²⁷ Exhibit "B-1-a"

- 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.

A close study of this case reveals that petitioner complied with all the above requisites. The fact that petitioner is a VAT registered entity is not disputed.²⁸ For the period covering the fourth quarter of 2005, petitioner actually shipped its mineral products abroad to a foreign buyer, particularly, Pan Pacific Copper Co., Ltd. of Tokyo, Japan, and generated export sales in the amount of US\$23,972,358.00 as shown in petitioner's Schedule of Direct and Indirect Export Sales²⁹ and various export documents such as provisional³⁰ and final³¹ sales invoices, bills of lading³² and export declarations.³³

It must be noted that while 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, which petitioner issues upon shipment, is the **Provisional Invoice** covering 90% of the estimated value of the shipment, and the second is the **Final Invoice** which petitioner issues only after the petitioner 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. This is 

²⁸ Stipulation of Facts and Issues, Par. 4, Docket, page 83

²⁹ Exhibit "F"

³⁰ Exhibits F-2 to F-4

³¹ Exhibits F-2-a to F-4-a

³² Exhibits F-2-c to F-4-c

³³ Exhibits F-2-b to F-4-b

stated under Clause 9 of petitioner's Long Term Gold and Copper Concentrates Sales Agreement with Pan Pacific Copper Co., Ltd. of Japan.³⁴ In other words, the considered date of the sale transaction is the shipment date indicated in the bill of lading. Inasmuch as the bills of lading covering the export sales of US\$23,972,358.00 are all dated within the fourth quarter of 2005, the related final invoices which carry dates much later than the dates when the sales or shipments were made, are deemed valid.

Likewise, the foreign currency proceeds of US\$23,972,358.00 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 certifications issued by local banks³⁵ and entries in petitioner's passbooks with local banks.

As to the adjustments to correct billings for previous quarter's shipments in the amount of US\$2,109,566.00, this Court finds the adjustments proper as shown by the provisional³⁶ and final sales invoices³⁷ submitted by petitioner.

After having resolved that petitioner had VAT zero-rated export sales for the fourth quarter of 2005 in the amount of US\$26,081,924.00 with peso equivalent of P1,404,851,639.25, we shall now determine the amount of input VAT attributable thereto. 

³⁴ Exhibit "C"

³⁵ Exhibits "G-1-a to G-4-a"

³⁶ Exhibits "F-5" to "F-10"

³⁷ Exhibits "F-5-a" to "F-10-a"

In its amended Quarterly VAT Return³⁸ covering the fourth quarter of 2005, petitioner reflected an input VAT of P30,173.58 on domestic purchase and an input VAT of P10,561,513.00 on importations totaling to P10,591,686.58 as shown below:

	Purchases	Input Tax
Domestic Purchases - Goods other than Capital Goods	P 301,735.80	P 30,173.58
Importations - Goods other than Capital Goods	105,615,130.00	10,561,513.00
Total	P 105,916,865.80	P 10,591,686.58

In support of the above-mentioned input taxes, petitioner presented its Summary of Input Taxes on Domestic Purchases³⁹ and the related suppliers' invoices/official receipts⁴⁰, Summary of Input VAT on Importations⁴¹ and the related Import Entry and Internal Revenue Declarations (IEIRDs)⁴², Bureau of Customs Official Receipts (ORs) or bank debit advises⁴³ which were examined by the Court-commissioned ICPA, Mr. Albert G. Alba.

After a careful examination and review of the ICPA's amended report⁴⁴ dated October 8, 2008 as well as petitioner's supporting documents, the following input taxes in the total amount of P3,462,260.67 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, in relation to Sections 4.110-7 and 4.113-1(B) of Revenue Regulations No. 14-05:

³⁸ Exhibits "B-1" or "J-1"

³⁹ Exhibit "I"

⁴⁰ Exhibits "I-1" to "I-50"

⁴¹ Exhibit "H"

⁴² Exhibits "H-1-a", "H-8-a", "H-20-a", "H-23-a" to "H-26-a", "H-37-a", "H-46-a", "H-49-a" and "H-52-a"

⁴³ Exhibits "H-1" to "H-53"

⁴⁴ Exhibit "E", No. 15, Page 5

	Supplier/Payee	Exhibit No.	Input VAT
1.)	Input VAT on domestic purchases supported by invoices/ORs dated outside the period of claim		
	DHL Danzas Air & Ocean (Phils.) Inc.	I-1	P 112.10
	Dimerco Express Phils., Inc.	I-2	593.50
	Sky Freight Forwarders, Inc.	I-3	90.00
	Air Power int'l Express Phils. Inc.	I-4	100.00
	DHL Danzas Air & Ocean (Phils.) Inc.	I-5	112.10
	Associated Freight Consolidators, Inc.	I-6	90.00
	Philippine Skylanders, Inc.	I-7	43.42
	Sky Freight Forwarders, Inc.	I-8	90.00
	Philippine Skylanders, Inc.	I-9	25.65
	Associated Freight Consolidators, Inc.	I-10	90.00
	Philippine Skylanders, Inc.	I-11	32.00
	Worldgate Logistics Services, Inc.	I-12	109.09
	DHL Danzas Air & Ocean (Phils.) Inc.	I-13	262.50
	Asiaworld Transport Phils. Co. Inc.	I-14	275.09
	Sky Freight Forwarders, Inc.	I-15	90.00
	Orient Freight International Inc.	I-16	431.60
	Quickflo Forwarders, Inc.	I-17	90.00
	Aboitiz Logistics, Inc.	I-18	112.10
	Philippine Skylanders, Inc.	I-19	151.58
	Exel Logistics Management Phils. Inc.	I-20	502.26
	Philippine Skylanders Inc.	I-21	56.45
	Orient Freight International, Inc.	I-22	90.00
	Panalpina World Transport Phils., Inc.	I-23	100.00
	Philippine Skylanders, Inc.	I-24	812.81
	DHL Danzas Air & Ocean (Phils.) Inc.	I-25	112.30
	DHL Danzas Air & Ocean (Phils.) Inc.	I-26	297.60
	Fritz Logistics Philippines, Inc.	I-27	150.00
	DHL Danzas Air & Ocean (Phils.) Inc.	I-28	112.30
	DHL Danzas Air & Ocean (Phils.) Inc.	I-29	112.30
	Philippine Skylanders, Inc.	I-30	27.09
	Transorient Container Terminal Services	I-31	392.16
	Philippine Skylanders, Inc.	I-32	107.82
	Sky Freight Forwarders, Inc.	I-33	90.00
	Subtotal		P 5,863.82
2)	Input VAT was not separately indicated on the invoices/ORs supporting petitioner's domestic purchases		
	Philippine Skylanders Inc.	I-34	P 36.80
	DHL Danzas Air & Ocean (Phils.) Inc.	I-35	112.50
	Philippine Skylanders Inc.	I-36	432.50
	Philippine Skylanders Inc.	I-37	34.81
	Sky Freight Forwarders, Inc.	I-38	90.00
	Sky Freight Forwarders, Inc.	I-39	90.00
	Manila Int'l Freight Forwarders, Inc.	I-40	90.00
	Sky Freight Forwarders, Inc.	I-41	90.00
	The Enterprise Warehousing Corp.	I-43	559.46

	Overseas Freighters Shipping, Inc.	I-45		929.00
	Dateline Cargo Express International Inc.	I-47		5,290.14
	Asian Terminals Inc.	I-48		2,134.56
	Asian Terminals Inc.	I-49		58.47
	The Enterprise Warehousing Corp.	I-50		601.27
	Subtotal		P	10,549.51
3.)	Input VAT on importation other than capital goods supported by documents dated outside the period of claim			
	Bureau of Customs	H-3	P	2,619.00
	Bureau of Customs	H-4		1,893.00
	Bureau of Customs	H-5		2,323.00
	Subtotal		P	6,835.00
4.)	Input VAT on importation of goods other than capital goods supported by BCORS or BDAS but do not show actual payment of VAT and not supported by IEIRD's			
	Bureau of Customs	H-6	P	41,905.00
	Bureau of Customs	H-7		211,257.00
	Bureau of Customs	H-9		478,446.00
	Bureau of Customs	H-10		174,572.00
	Bureau of Customs	H-11		38,410.00
	Bureau of Customs	H-12		47,926.00
	Bureau of Customs	H-13		21,768.00
	Bureau of Customs	H-14		6,998.00
	Bureau of Customs	H-15		24,792.00
	Bureau of Customs	H-17		236,793.00
	Bureau of Customs	H-18		72,760.00
	Bureau of Customs	H-19		11,901.00
	Bureau of Customs	H-21		232,582.00
	Bureau of Customs	H-27		47,649.00
	Bureau of Customs	H-28		105,911.00
	Bureau of Customs	H-35		26,670.00
	Bureau of Customs	H-36		58,757.00
	Bureau of Customs	H-38		88,009.00
	Bureau of Customs	H-39		321,963.00
	Bureau of Customs	H-40		80,298.00
	Bureau of Customs	H-41		53,947.00
	Bureau of Customs	H-42		153,583.00
	Bureau of Customs	H-46		18,848.00
	Bureau of Customs	H-47		49,459.00
	Bureau of Customs	H-50		64,174.00
	Bureau of Customs	H-51		47,507.00
	Bureau of Customs	H-53		105,516.00
	Subtotal		P	2,822,401.00
5.)	No supporting documents presented			
	Claimed input VAT on domestic purchases	H, page 5, item no. 15	P	11,528.34

	CI ⁴⁵ aimed input VAT on importations	H, page 4, item no. 11	605,083.00
	Subtotal		P 616,611.34
	Total		P 3,462,260.67

Therefore, only the remaining claim in the amount of P7,129,425.91 (P10,591,686.58 less P3,462,260.67) represents petitioner's valid input tax which is entirely attributable to its zero-rated sales considering that it had no taxable or exempt sales for the fourth quarter of 2005.

As to the fourth requisite, this Court found that petitioner was unable to utilize the substantiated input VAT of P7,129,425.91 since it had no output VAT liability for the fourth quarter of 2005⁴⁶. Although petitioner carried-over the said input tax in the succeeding Quarterly VAT Returns⁴⁷ for the first quarter of 2006 to the fourth quarter of 2007, the same remained unutilized because petitioner's output tax liabilities for the said period were offset against the current quarter's input taxes. Moreover, in its Quarterly VAT Return for the fourth quarter of 2007⁴⁸, petitioner deducted the amount P47,218,715.98⁴⁹ as "VAT Refund/TCC Claimed" which included the present claim of P10,591,686.58. Thus, petitioner could not have possibly utilized the subject claim in the succeeding quarters.

Finally, this Court finds that both the administrative and judicial claims for refund were timely filed within the two-year prescriptive period provided by law. This is on the basis of the prevailing jurisprudence at the time of the filing of the Petition for Review which is the ruling of the Supreme Court in the case of *Atlas*

⁴⁵ Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007.

⁴⁶ Exhibit "B-1"

⁴⁷ Exhibits "J-2" to "J-9"

⁴⁸ Exhibit "J-9"

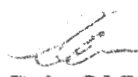
⁴⁹ Exhibits "J-9", line 23D

Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (Atlas Case), G.R. Nos.141104 & 148763, June 8, 2007. In the said case, it was held that the reckoning of the two year prescriptive period for filing the claim for refund is on the date when the Quarterly VAT Return was filed.

Accordingly, counting from January 24, 2006⁵⁰, the date when petitioner originally filed its Quarterly VAT Return for the fourth quarter of 2005, petitioner had until January 24, 2008 within which to file its claim administratively and judicially. Hence, petitioner's administrative claim filed on June 20, 2007⁵¹ and the Petition for Review filed on January 17, 2008 fell within the two-year prescriptive period.

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. **ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of SEVEN MILLION ONE HUNDRED TWENTY NINE THOUSAND FOUR HUNDRED TWENTY FIVE PESOS AND 91/100 (P7,129,425.91) to petitioner, Philex Mining Corporation, representing its unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales covering the fourth quarter of taxable year 2005.

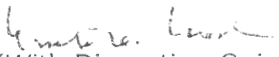
SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

⁵⁰ Exhibit "B"

⁵¹ Stipulation of Facts and Issues, Part. 6, Docket, page 84

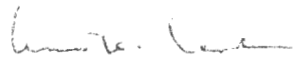
WE CONCUR:


(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
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
Chairman, First Division