REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**SPECIAL FIRST DIVISION**

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| PHILEX MINING CORPORATION, Petitioner, | C.T.A. CASE NO. 8371 |
| | Members: |
| - versus - | UY, *Chairperson*; and FABON-VICTORINO, JJ. |
| | Promulgated: |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | NOV 12 2013 ; 1:51 p.m. |

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# DECISION

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

In this Petition for Review filed on November 10, 2011, petitioner Philex Mining Corporation prays for the refund of P42,351,858.29, allegedly representing excess and unutilized input value-added tax (VAT) on its importation of goods and domestic purchases of services for the third quarter of 2009.

Petitioner, a duly organized domestic corporation with principal office at 27 Brixton Street, Pasig City, is engaged in the mining business, which includes exploration and operation of mine properties and commercial production and marketing of mine products.

As VAT-registered entity, petitioner was issued Registration Certificate No. 35-6-000731 effective October

29, 1987. It likewise has a duly approved Application for Zero Rate effective April 12, 1988.[1]

Respondent, on the other hand, is the Commissioner of the Internal Revenue (CIR), with authority among others to grant refund or tax credit of taxes erroneously or illegally collected. She holds office at the Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.

On March 11, 2004, petitioner entered into a "Long Term Gold and Copper Concentrates Sales Agreement"[2] with Pan Pacific Copper Co., Ltd. of Tokyo, Japan, for the sale of its copper concentrates starting April 1, 2004. On August 16, 2007, petitioner entered into a similar contract with Louis Dreyfus Commodities Metals Suisse SA, a Swiss company, for the sale of its copper concentrates.[3]

Petitioner claims that it made several shipments of mineral products to its foreign buyers during the 3rd quarter of 2009 with a total sales of US$71,556,185.00[4].

On October 21, 2009 petitioner filed its original or tentative VAT return for the 3rd Quarter of 2009. On May 18, 2011, it filed an amended VAT return reflecting a total zero-rated sales of P3,444,737,285.82, importation of goods of P196,911,750.00 with input tax of P23,629,410.00, and purchases of services of P156,020,402.42 with input tax of P18,722,448.29.[5]

On June 15, 2011, petitioner filed an administrative claim for refund with the One-Stop-Shop Center of the of the Department of Finance (DOF) in the amount of P42,351,858.29[6], allegedly representing excess input tax for the 3rd quarter of 2009.

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[1] Pars. 1 and 3, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, pp. 57-58.
[2] Exhibit "B".
[3] Exhibit "Q".
[4] Exhibit "F".
[5] Par. 4, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 58.
[6] Exhibit "O"; Par. 5, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 58.

On November 10, 2011, petitioner filed the instant Petition for Review alleging inaction on the part of the respondent on its administrative claim for refund.

On February 9, 2012, respondent filed the required Answer[7] interposing 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).

   C. The submission of complete documents in support of the administrative claim for tax

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[7] Docket, pp. 31-34.

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 P42,351,858.29 allegedly representing excess and unutilized input taxes for the 3rd quarter of 2009, were:

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

E. The petitioner's claim for tax refund allegedly representing excess and unutilized input taxes for the 3rd Quarter of 2009 in the amount of P42,351,858.29 was filed within the 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 legislature 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 *strictissimi juris* against the entity claiming the same. Moreover, statutes in derogation of sovereignty such as those containing exemption 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. (citations omitted)

On April 12, 2012, the parties filed their Joint Stipulation of Facts and Issues, which the Court approved on May 7, 2012.[8]

In support of its case, petitioner presented two (2) witnesses, namely, the Manager of its Accounting Department, Eileen C. Rodriguez and the Court-commissioned Independent Certified Public Accountant (ICPA), Milagros F. Padernal.

Eileen C. Rodriguez, by way of judicial affidavit[9] testified that as Manager of the Accounting Department of petitioner she supervises and reviews the preparation and filing of its tax returns, as well as its claims for refund of overpaid and/or excess internal revenue taxes. According to her, petitioner is into mining industry and its main products are copper concentrates and partly gold bullions. These products are sold and shipped to its buyers, specifically Pan Pacific Copper Co., Ltd., of Tokyo, Japan, and to Louis Dreyfus Commodities Metals of Switzerland which acts as a broker for other foreign buyers. The sale transactions are covered by a contract denominated as Long Term Gold and Copper Concentrates Sales Agreement dated March 11, 2004, which was signed by petitioner's former Chairperson and Chief Executive Officer (CEO) Walter Brown.[10]

For each shipment of mineral products to its buyers, petitioner issues two invoices in view of *Clause 9 of the Agreement* which provides two stages of payment for the shipment: *first*, a provisional payment at the time of shipment equal to 90% of the provisional price as determined by petitioner based on the weight and petitioner's provisional assay, and *second*, a final payment covering the balance of the concentrate value upon presentation of the final invoice. The first invoice is for the

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[8] Docket, p. 64.
[9] Exhibit "A".
[10] Exhibit "B-1".

90% provisional payments while the final invoice reflects the final concentrate value and the final balance due after deducting the 90% provisional payment.

Due to the intricate and long procedure required under *Clause 10 of the Agreement* which included the weighing, sampling, sample preparation, determination of moisture content, independent assaying by the respective assays of petitioner and the buyers, designation of and referral to an independent umpire for settlement of the difference between petitioner and the buyers assays to arrive at the price or final concentrate value, delays in the issuance of the final invoice by petitioner are sometimes incurred. The Final Invoice can only be issued after the parties arrived at a final settlement as to weight, moisture content, assay and price.

During the 3rd quarter of 2009, petitioner sold its copper concentrates to its buyers Pan Pacific Copper Co., Ltd., of Tokyo, Japan, and to Louis Dreyfus Commodities Metals of Switzerland under the same Agreements.

Eileen C. Rodriguez admitted that she was not present when the Agreements were signed since the negotiation and the execution of the said Agreement involved higher officers of petitioner only, such as the chairman and CEO and their counterparts. In any event, she is familiar with the signature of petitioner's former Chairperson and CEO Walter Brown having worked with him for a considerable length of time. She filed the supporting documents to substantiate petitioner's administrative claim for refund.

The witness further clarified that the hiring of an umpire is sometime dispensed with as when the assay of both teams are within the acceptable range dictated under the Agreement. However, she is not certain if the services of an umpire were secured for the shipment for the third quarter of 2009, the subject of the instant case. Lastly, she stressed that the final receipts is issued only upon the verification of the umpire when there is a dispute on the results of the assay.

The second witness, ICPA Milagros F. Padernal testified that her review and verification of petitioner's pertinent documents revealed that the input taxes in the total amount of P42,351,858.29 paid for the 3rd quarter of 2009, P268,293.37 was used to pay the output tax for said quarter. Further, the input tax of P42,351,858.29 for the 3rd quarter of 2009 was reflected as "VAT Refund/TCC Claimed" in the 1st quarter 2011 VAT that it could no longer be carried over to the succeeding quarter since it would be the subject of an administrative claim for refund to be filed within the prescribed period.[11]

The ICPA opined that while the total claim in the Petition for Review is P42,351,858.29, her findings based on the documents presented for audit warrant a downward adjustment of P1,360,340.59.

After formal offer of its evidence, petitioner rested its case.

During the hearing for the reception of evidence for respondent, her counsel manifested that respondent would no longer present evidence in support of her position. Thereafter, the parties filed their respective memoranda.

The sole issue,[12] jointly submitted by the parties for determination is as follows:

> Whether or not Petitioner is entitled to the refund of the excess input taxes in the total amount of P42,351,858.29 for the 3rd Quarter of 2009 due to petitioner being an exporter of mineral products.

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[11] Exhibits "D" and "E".
[12] Statement of Issue, Stipulation of Facts and Issues, docket, p. 58.

## The Ruling of the Court

Petitioner anchors its claim for refund on Section 112 of the National Internal Revenue Code (NIRC) of 1997, 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 sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."
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> xxx xxx xxx

> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Corollary to the foregoing is *Section 4.112-1 of Revenue Regulations No. 16-2005*, the pertinent portion of which reads as follows:

> (a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services
>
> A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.

Based on the foregoing provisions, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of unutilized input VAT attributable to such zero-rated or effectively zero-rated sales upon compliance with the following requisites:

1. 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 tax liability; and
5. that the claim for refund was filed within the period prescribed by law.

First, the Court must determine if the claim for refund or issuance of tax credit certificate was seasonably filed by petitioner.

As explicitly provided under Section 112(A) of the NIRC of 1997, as amended, the application for refund/tax credit must be filed within two years after the close of taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the third quarter of 2009 which closed on September 30, 2009. Counting two years from this date, petitioner had until September 30, 2011 within which to file its administrative claim for refund. Therefore, petitioner's administrative claim for refund/TCC under Claim Information Sheet No. 62441[13] was seasonably filed with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center (OSSC) of the Department of Finance on June 15, 2011.

[13] Exhibit O, Par. 5, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 58.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, relevantly provides as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Respondent posits that the 120-day period for her to act on a claim for refund commences to run only after the taxpayer-claimant submits complete supporting documents. In this case, petitioner failed to prove compliance with this requirement which is fatal to its cause as this constitute a ground for the denial of the relief sought.

Petitioner however counters that attached to the Claimant Information Sheet it filed with OSSC were its supporting documents consisting of at least three thick folders as OSSC does not accept application or claim *sans* supporting documents. In support of this contention, petitioner submitted to the Court a two-page letter addressed to the OSSC dated May 4, 2011 enumerating the documents submitted with their general description.[14]

Significantly, there is nothing in the record that shows that respondent required and petitioner failed to submit additional documents to support its claim for refund/tax credit. This simply means that the 120-day period started and continued to run from June 15, 2011 in consonance with Revenue Memorandum Circular No. 029-09 which reads as follows:

> III. *Period within which Refund or Tax Credit of Input Taxes shall be Made*
>
> Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining 'proper cases' in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
>
> > a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
> >
> > b. That all books of accounts and accounting records pertaining to the claim are immediately available to the

[14] (Petitioner Rejoinder, Annex A, docket pp. 160-161).

> concerned Revenue Office (RO) for audit/verification;
>
> c. Any discrepancies/ findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and
>
> d. The taxpayer/ claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.
>
> **In cases where taxpayer failed to comply with the above conditions/requirements**, *i.e.*, failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer**. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request. *(Emphasis supplied)*

Thus, respondent had until October 13, 2011, within which to grant or deny petitioner's claim for refund/tax credit. Since the 120-day period lapsed without any action on the part of respondent, petitioner had 30 days or until November 13, 2011 to seek judicial intervention. Evidently, the instant Petition for Review was timely filed on November 10, 2011.

Anent the first requisite, petitioner's amended Quarterly VAT Returns for the third quarter of 2009 reflected zero-rated sales in the total amount of P3,444,737,235.82 (Exhibit N-2(1/2 and Petition for Review, Annez B-1, line 17). In relation thereto, the ICPA noted in her Amended Report (Exhibit E, No. 4 of the Findings, p. 2) that petitioner's zero-rated sales consisted of sales of copper to the following entities:

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|---|---|
| Sales of copper: | |
| Pan Pacific Copper Co., LTD. | US$ 70,162,227.00 |
| Louis Dreyfus Commodities Metals Suisse[15] | 1,393,958.00 |
| | **US$71,556,185.00** |

Per petitioner's Schedule of Export Sales,[16] the actual total amount of petitioner's export sales is US$71,556,186.00, broken down as follows:

| **Provisional Invoice No.** | **Exhibit** | **Final Invoice** | **Exhibit** | **Consignee** | **Amount Recorded in the General Ledger for the Current Quarter** |
|---|---|---|---|---|---|
| *Provisional Billings for Direct Export Sales of Copper* | | | | | |
| PX-02569 | F-1-b | PX-02575 | F-1-c | Pan Pacific Copper Co., Ltd. | US$ 18,811,838.00 |
| PX-02570 | F-2-b | PX-02576 | F-2-c | Pan Pacific Copper Co., Ltd. | 18,424,606.00 |
| PX-02571 | F-3-b | PX-02579 | F-3-c | Pan Pacific Copper Co., Ltd. | 16,654,042.00 |
| PX-02573 | F-4-b | PX-02580 | F-4-c | Pan Pacific Copper Co., Ltd. | 15,924,542.00 |
| *Subtotal* | | | | | US$ 69,815,028.00 |
| | | | | | |
| *Adjustment to Previous Quarter's Provisional Billings* | | | | | |
| PX-02556 | F-5-b | PX-02567 | F-5-c | Pan Pacific Copper Co., Ltd. | US$ 47,278.00 |
| PX-02558 | F-6-b | PX-02568 | F-6-c | Louis Dreyfus Commodities Metals Suisse SA | (116,397.00) |
| PX-02559 | F-7-b | PX-02574 | F-7-c | Louis Dreyfus Commodities Metals Suisse SA | 1,510,355.00 |
| PX-02561 | F-8-b | PX-02566 | F-8-c | Pan Pacific Copper Co., Ltd. | - |
| PX-02565 | F-9-b | PX-02572 | F-9-c | Pan Pacific Copper Co., Ltd. | 299,922.00 |
| *Subtotal* | | | | | US$ 1,741,158.00 |
| **Total** | | | | | **US$71,556,186.00** |

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[15] Exhibits "Q" and "Q-1".
[16] Exhibit "F".

Petitioner claims that its shipments and sales of copper concentrates to Pan Pacific Copper Co., Ltd. of Tokyo, Japan and Louis Dreyfus Commodities Metals Suisse SA, are VAT zero-rated pursuant to *Section 106(A)(2)(a)(1)*[17] *of the NIRC of 1997*, as amended. But in order for an export sale to qualify as zero-rated under the said provision, the following conditions must be present:

1. that there was sale and actual shipment of goods from the Philippines to a foreign country;
2. that the sale was made by a VAT-registered person;
3. that the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. that the payment was accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

Corollary to the first requisite, *Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997*, as amended, as implemented by *Sections 4.113-1(A)(1), B(1)* and *(2)(c) of RR No. 16-2005*, as amended, provide that a VAT taxpayer, like petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

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[17] SEC.106. *Value-added Tax on Sale of Goods or Properties* -
(A) *Rate and Base of Tax*. - 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).

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(A) *Invoicing Requirements*. - A VAT-registered person shall issue:

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

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

xxx xxx xxx

(C) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" *(Emphasis supplied)*

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

(A) **A VAT-registered person shall issue:** -

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

xxx xxx xxx

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

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

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

> (C) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt; *(Emphasis supplied)*

In addition to the above requirements, the invoice or receipt must be duly registered with the BIR as prescribed under *Section 237* in relation to *Section 238 of the NIRC of 1997*, as amended, to wit:

> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices*. - All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered** receipts or **sales** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx *(Emphasis supplied)*
>
> 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.

Pursuant to the foregoing provisions, any VAT-registered person 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 other words, only export sales supported by these documents shall qualify for VAT zero-rating under *Section 106(A)(2)(a)(1) of the NIRC of 1997*, as amended.

Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information provided by law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Evidence reveals that petitioner has complied with all the requisites for the VAT zero-rating of its export sales for the third quarter of 2009, but only to the extent of P3,377,631,660.52 out of the total reported zero-rated sales of P3,444,737,235.82.

It is undisputed that petitioner is VAT-registered.[18] Pursuant to its Long Term Gold and Copper Concentrate Sales Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan,[19] petitioner actually shipped mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, and generated export sales, as shown in petitioner's Schedule of Export Sales[20] and various export documents such as VAT zero-rated provisional[21] and final[22] sales invoices, bills of lading,[23] and export declarations.[24] Likewise, the foreign currency proceeds derived from said export sales were inwardly remitted and accounted for in accordance with the rules and bank regulations of the *Bangko Sentral ng Pilipinas* as

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[18] Par. 3, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 58.
[19] Exhibit "B".
[20] Exhibit "F".
[21] Exhibits "F-1-b" to "F-9-b".
[22] Exhibits "F-1-c" to "F-9-c".
[23] Exhibits "F-1-a" to "F-9-a".
[24] Exhibits "F-1" to "F-9".

evidenced by the bank certifications,[25] entries in petitioner's passbook[26] in local banks of the payments received, and Summary of Sales and Remittances[27] for the 3rd quarter of 2009.

However, as aptly observed by the ICPA, petitioner's Final Invoice Nos. PX-02568[28] and PX-02574[29] pertaining to its sales to Louis Dreyfus Commodities Metals Suisse SA exceeded the allowed number of invoices to be printed and issued per BIR permit to print indicated at the lower left side of the Final Invoices. Consequently, for not being supported by proper sales invoices as provided by *Sections 113, 237 and 238 of the NIRC of 1997*, as amended, and *Revenue Regulations No. 16-2005*, as amended, petitioner's claimed direct export sales to Louis Dreyfus Commodities Metals Suisse SA in the amount of US$1,393,958.00 for the 3rd quarter of 2009 cannot qualify for VAT zero-rating.

This being the case, only the remaining reported zero-rated sales for the 3rd quarter of 2009 in the amount of US$70,162,228.00 with the peso equivalent of P3,377,631,660.52, as computed below, is subject to zero percent (0%) VAT under *Section 106(A)(2)(a)(1) of the NIRC of 1997*, as amended:

| | | |
|---|---|---|
| Declared Zero-Rated Sales in US$ | | 71,556,186.00 |
| Less: Sales to Louis Dreyfus Commodities Metals Suisse SA supported by invoices without BIR permit to print | | |
| Invoice No. PX – 02568 (Exhibit "F-6-c") | (116,397.00) | |
| Invoice No. PX-02574 (Exhibit "F-7-c") | 1,510,355.00 | 1,393,958.00 |
| Valid Zero-Rated Sales in US$ | | 70,162,228.00 |
| Multiplied by Average peso to dollar rate: | | |
| Declared Zero-Rated Sales in PhP | 3,444,737,235.82 | |
| Declared Zero-Rated Sales in US$ | 71,556,186.00 | |
| Average peso to dollar rate | | 48.1403136246 |
| **Valid Zero-Rated Sales in PhP** | | **3,377,631,660.52** |

[25] Exhibits "G-1" to "G-8".
[26] Exhibits "G-1-a" to "G-8-a".
[27] Exhibit "G".
[28] Exhibit "F-6-c".
[29] Exhibit "F-7-c".

With the finding that petitioner has VAT zero-rated sales for the third quarter of 2009 in the total amount of P3,377,631,660.52, the Court must determine whether petitioner incurred input taxes in connection to its zero-rated sales and if said input taxes were not applied against any of its output VAT liability.

Petitioner's amended Quarterly VAT Return for the 3rd quarter of 2009[30] reflects an input VAT of P23,629,410.00 on importations and input VAT of P18,722,448.29 on domestic purchases of services in the total amount of P42,351,858.29, as shown below:

| | **Purchases** | **Input Tax** |
|---|---|---|
| Importations - Goods other than capital goods | P 196,911,750.00 | P 23,629,410.00 |
| Domestic Purchase of Services | 156,020,402.42 | 18,722,448.29 |
| **Total** | **P352,932,152.42** | **P42,351,858.29** |

In the ICPA Report,[31] petitioner's input VAT claim of P42,351,858.29 was further broken down as follows:

| | |
|---|---|
| **Input Taxes on Importations of Goods** | |
| Supported by original BOC SSDTs[32]/BORs[33] and IEIRDs[34] | |
| Dated in the current third quarter of 2009 (Exhibits "H-1" to "H-38-a") | P 15,912,831.00 |
| Out-of-period receipts dated second quarter of 2009 (Exhibits "H-1" to "H-38-a") | 4,399,374.00 |
| Supported by original BCORs[35] | |
| Dated in the current third quarter of 2009 (Exhibits "I-1" to "I-3") | 8,838.00 |
| Out-of-period receipts dated second quarter of 2009 (Exhibits "I-4") | 207.00 |
| Supported by original IEIRDs | |
| Dated in the current third quarter of 2009 (Exhibits "J-1") | 3,131,089.00 |
| No supporting documents | 177,071.00 |
| ***Subtotal*** | **P23,629,410.00** |
| | |
| **Input Taxes on Purchases of Services** | |

[30] Exhibit "N-2".
[31] Exhibit "E".
[32] Bureau of Customs Statement of Settlement of Duties and Taxes.
[33] Bank Official Receipts.
[34] Import Entry and Internal Revenue Declarations.
[35] Bureau of Customs Official Receipts.

| | |
|---|---|
| Supported by original VAT Official Receipts | |
| Dated in the current third quarter of 2009 (Exhibits "L-1" to "L-69") | P 18,594,535.59 |
| Out-of-period receipts dated second quarter of 2009 (Exhibits "L-70" to "L-109") | 37,976.43 |
| No supporting documents | 89,936.27 |
| ***Subtotal*** | **P18,722,448.29** |
| **Total** | **P42,351,858.29** |

Based on the above ICPA's findings, petitioner's claim in the amount of P4,704,564.70 as shown below must be disallowed:

| | **Importation** | **Domestic** | **Total** |
|---|---|---|---|
| Supported by original BOC SSDTs/BORs and IEIRDs dated 2nd quarter of 2009 | P 4,399,374.00 | - | P 4,399,374.00 |
| Supported by original BCORs only dated 2nd quarter of 2009 | 207.00 | - | 207.00 |
| Supported by original VAT ORs dated 2nd quarter of 2009 | - | P 37,976.43 | 37,976.43 |
| No supporting documents | 177,071.00 | 89,936.27 | 267,007.27 |
| **Total** | **P4,576,652.00** | **P127,912.70** | **P4,704,564.70** |

Section *110(A)(1)(b) of the NIRC of 1997*, as amended, provides as follows:

> SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> (b) Purchase of services on which a value-added tax has actually been paid.
>
> (2) The input tax on domestic purchase or importation of goods or

w

> properties by a VAT-registered person shall be creditable:
>
> xxx xxx xxx
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

It is clear from the above-quoted provision that the input tax on the importation of goods shall be creditable to the importer upon payment of the VAT prior to the release of the goods from the custody of the Bureau of Customs (BOC), *i.e.*, upon the issuance of the BOC or bank official receipt. Likewise, the input tax on the purchase of services is creditable to the purchaser upon payment of the VAT on the services, *viz.*, upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.

Therefore, it was indubitable on the part of petitioner to declare the input taxes on importation of goods and purchase of services in the taxable quarter when the payment for the VAT on the importation and purchase of services was made.

Consequently, the input taxes on petitioner's importation of goods in the amounts of P4,399,374.00 and P207.00 as well as the input taxes on its domestic purchases of services in the amount of P37,976.43, which are supported by receipts dated 2nd quarter of 2009 shall be denied because these should have been declared in its VAT Return for the 2nd quarter of 2009.

Similarly, petitioner's claimed input taxes on importation of goods in the amount of P177,071.00 and input taxes on domestic purchases of services in the amount of P89,936.27, which do not have supporting BOC or bank official receipts or machine-validated Import Entry and Internal Revenue Declarations and VAT official receipts, respectively, shall be denied pursuant to *Section 110(A)* in relation to *Section 113(A)(2) of the NIRC of 1997, as amended.*

Accordingly, only the amount of P37,647,293.59 represents petitioner's valid input tax for the 3rd quarter of 2009, computed as follows:

| | **Input VAT on Importation of Goods** | **Input VAT on Domestic Purchases of Services** | **Total** |
|---|---|---|---|
| Input VAT claimed | P 23,629,410.00 | P 18,722,448.29 | P 42,351,858.29 |
| Less: Disallowances | 4,576,652.00 | 127,912.70 | 4,704,564.70 |
| **Valid Input VAT** | **P19,052,758.00** | **P18,594,535.59** | **P37,647,293.59** |

A portion, however, of the P37,647,293.59 input VAT shall be applied against petitioner's reported output VAT liability for the 3rd quarter of 2009 in the amount of P268,293.37.[36] As a result, only the remaining input VAT of P37,379,000.22 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P3,444,737,235.82 and only the input VAT of P36,650,834.57 is attributable to the valid zero-rated sales of P3,377,631,660.52, as computed below:

| | |
|---|---|
| Valid Input VAT | P 37,647,293.59 |
| Less: Output VAT | 268,293.37 |
| Excess Input VAT | P 37,379,000.22 |
| | |
| Valid Zero-Rated Sales | P 3,377,631,660.52 |
| Divide by Total Declared Zero-Rated Sales | ÷ P 3,444,737,235.82 |
| Multiplied by Excess Input VAT | × 37,379,000.22 |
| **Excess Input VAT Attributable to Valid Zero-Rated Sales** | **P 36,650,834.57** |

Although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[37] from the 4th quarter of 2009 to the 1st quarter of 2011, the same remained unutilized until it was deducted in its Quarterly VAT Return for the 1st quarter of 2011 as "VAT Refund/TCC

[36] Exhibit "N-2(1/2)" and Petition for Review, Annex "B-1", line 19B.
[37] Exhibits "N-3" to "N-8".

Claimed"[38] together with the input tax incurred in the 2nd quarter of 2009, from the total available input tax of P331,228,457.21.[39] Thus, the claimed input taxes for the 3rd quarter of 2009 could not have been carried over/utilized in the succeeding 2nd quarter of 2011.

**WHEREFORE**, this Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** petitioner Philex Mining Corporation the amount of **P36,650,834.57,** representing the latter's unutilized excess input VAT attributable to zero-rated sales for the 3rd quarter of 2009.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

*I Concur:*

ERLINDA P. UY
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.

ERLINDA P. UY
Chairperson

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[38] Exhibit "N-8", line 23D.
[39] Exhibit "N-8", line 22.

## 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.

ROMAN G. DEL ROSARIO
Presiding Justice