REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NO. 7838**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 1 6 2010 4:16 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks the refund of the amount of P14,467,735.03, representing petitioner's alleged excess and unutilized input value-added tax (VAT) for the third quarter of taxable year 2006.

Philex Mining Corporation (petitioner) is a corporation organized under Philippine laws, with principal office at 27 Philex Building, Fairlane St., Pasig City. It is engaged in the mining business, which includes the exploration and operation of mine properties and the commercial production and marketing of mine products. Petitioner is a VAT-registered taxpayer, with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987, and under BIR Form

No. 2303 as of January 31, 1997. It also has a duly approved Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95.[1]

On the other hand, the Commissioner of Internal Revenue (respondent) is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the National Internal Revenue Code (NIRC). He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Original VAT Return for the third quarter of 2006 on October 19, 2006. Petitioner filed an Amended VAT Return on February 28, 2008, which reflected total zero-rated sales of P2,954,247,235.93, domestic purchases of goods in the amount of P4,379,839.34 with input tax of P525,580.72, importation of goods of P115,191,615.00 with input tax of P13,822,993.80, and purchases of services in the amount of P993,004.25 with input tax of P119,160.51.[2]

Petitioner filed its claim for refund/tax credit with the One-Stop Shop Inter-agency Tax Credit and Duty Drawback Center of the Department of Finance on January 10, 2007, per Application No. 54768 for the amount of P14,467,735.03.[3]

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1 Annexes "A", "A-1", and "A-2", Petition for Review, docket, p. 6; pars. 1 and 2, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 36

2 Annexes "B" and "B-1", Petition for Review, docket, pp. 7-10; par. 3, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 37

3 Annex "C", Petition for Review, docket, p. 11; par. 4, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 37

Respondent has not taken any action on petitioner's administrative claim for refund; hence, petitioner filed its judicial claim with this Court on October 6, 2008.

In his Answer[4] filed on November 5, 2008, respondent alleged the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
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> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
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> 8. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

On December 4, 2008, the parties filed their "Stipulation of Facts and Issues," which was approved by this Court in a Resolution[5] dated December 12, 2008; thus, the Pre-Trial was terminated and the parties were ordered to proceed with the trial on the merits.

Petitioner filed its Formal Offer of Evidence on June 9, 2009, offering Exhibits "A" to "J", inclusive of submarkings; which were duly admitted in a Resolution dated July 30, 2009.

During the hearing held on September 16, 2009, counsel for respondent manifested that he is constrained to waive respondent's right to present evidence since he has not received any report of the investigation

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[4] Docket, pp. 22-24
[5] Docket, p. 40

from the concerned BIR Revenue District Office. The parties were likewise given a period of thirty (30) days from September 16, 2009 or until October 16, 2009, within which to file their respective Memorandum.

On October 22, 2009, the case was ordered submitted for decision, considering petitioner's Memorandum filed on October 16, 2009 and the report of this Court's Records Division that respondent failed to file his Memorandum.[6]

The issues[7] submitted by the parties for the Court's resolution are as follows:

> "1. Whether or not Petitioner's domestic purchases and importations of goods which are attributable to its export sales for the 3rd quarter of 2006, are duly supported by documentary evidence.
>
> 2. Whether Petitioner made direct exports of mineral products during the same period.
>
> 3. Whether or not the accumulated or excess input VAT was not utilized or applied by Petitioner against output VAT in the 3rd quarter of 2006 or in the succeeding quarters or taxable years.
>
> 4. 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 Bangko Sentral ng Pilipinas.
>
> 5. Whether or not Petitioner is entitled to the refund of the excess input taxes in the total amount of P14,467,735.03 for the 3rd quarter of 2006 paid for the purchase of goods and services due to Petitioner being a producer and exporter of mineral products."

The foregoing issues can be summarized as follows:

[6] Docket, p. 145
[7] Docket, pp. 37-38

"Whether or not petitioner is entitled to a refund of the amount of P14,467,735.03, representing alleged unutilized input taxes of petitioner for the third quarter of taxable year 2006."

Section 112(A) of the National Internal Revenue Code of 1997, as amended, lays down the requirements for refund or issuance of tax credit certificate of input tax due or paid attributable to zero-rated sales, to wit:

> "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." *(Emphasis supplied)*

From the foregoing, petitioner must comply with the following requisites to be entitled to a refund or tax credit of input tax:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes were directly attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

The Court finds it appropriate to determine first the timeliness of the filing of the instant claim.

In the case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[8], the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made pertaining to input VAT, regardless of whether said tax was paid or not. The pertinent portions of the High Court's Decision read:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x (Emphasis ours.)
>
> **The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus when a zero-rated VAT taxpayer pays its input VAT a year after the

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

> pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.**" *(Emphasis supplied)*

Based on the afore-quoted jurisprudence, the reckoning of the two-year prescriptive period shall commence from the close of the taxable quarter when the relevant sales were made pertaining to input VAT, regardless of whether said tax was paid or not.

The present claim involves petitioner's input VAT for the third quarter of taxable year 2006. Counting from the close of said quarter on September 30, 2006, petitioner had until September 30, 2008, within which to file its refund claim, both in the administrative and judicial levels.

Perusal of the records reveals that petitioner's administrative claim for refund of its input VAT incurred for the third quarter of taxable year 2006 was filed on January 10, 2007. On the other hand, the Petition for Review was filed before this Court on October 6, 2008.

Applying the foregoing provision of law and jurisprudence, the Court finds that only the administrative claim for refund was filed on time. Consequently, petitioner is already barred from claiming refund of its alleged excess and unutilized input taxes for the third quarter of taxable year 2006 in the amount of P14,467,735.03, due to prescription.

In view of the foregoing, the Court deems it unnecessary to determine petitioner's compliance with the other requisites pertinent to refund claims.

WHEREFORE, the instant Petition for Review is hereby **DENIED** due to prescription.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

See attached Separate Concurring Opinion
(With Separate Concurring Opinion)
OLGA PALANCA-ENRIQUEZ
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

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