REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NO. 10037**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 15 2021 11:47 AM

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a. With regard to Amortization of Input VAT on Capital Goods Exceeding ₱1Million in the total amount of ₱12,329,703.07, the Court ruled that "records reveal that the corresponding commercial invoices attached to the aforesaid BOC SSDT/SAD, marked as Exhibits "P-926" to "P1063", were denied admission by this Court xxx for being mere photocopies as determined by the ICPA."; and,

b. With regard to Input VAT from Importation of Goods other than Capital Goods in the amount of ₱60,930,844.93, the Court ruled that: "the said BOC SSDT/SAD, marked as Exhibits "P-689" to "P-744" and "P-746" to "P-924", were among the exhibits that have been denied admission xxx for being mere photocopies as determined by the ICPA."

At the onset, petitioner submits that it concurs with the finding of the Court denying admission of the commercial invoices attached to the Bureau of Custom (BOC) Statement of Settlement of Duties and Taxes (SSDT)/Single Administrative Document (SAD) for being mere photocopies as reported by the ICPA. However, petitioner asserts that reconsideration of the denial is warranted considering that in Resolution dated December 2, 2019, the Court admitted BOC SSDTs/SADs marked as Exhibits "P-689" to "P-744" and "P-746" to "P-924" and denied only the commercial invoices attached to them.

More so, petitioner also argues that as per the ICPA report, the SSDTs/SADs were original computer printouts, which were downloaded from the websites of third-party providers, issued by the BOC. As such, the original printouts of the SSDTs, Assessment Notices, and SADs should be admissible as original documents in accordance with Section 4(a),[1] Rule 130 of the Revised Rules of Evidence.

Petitioner further argues that based on the BIR issuances,[2] the SSDTs and SADs are considered as the equivalent of the Import Entry and Internal Revenue Declaration (IEIRD) for purposes of substantiating input VAT on importations. It continues that the BOC likewise considers the SSDTs and SADs as sufficient proof of payment of input VAT on importations. Hence, petitioner asserts that it has

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[1] Section 4. *Original of document.* – (a) An "original" of a document is the document itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data is stored in a computer or similar device, any printout or other output readable by sight or other means, shown to reflect the data accurately, is an "original."

[2] Section 4.110-8, Revenue Regulations No. 16-2005; Revenue Memorandum Circular No. 47-19; and, Revenue Memorandum Order No. 25-19.

sufficiently proven its claim for refund of excess and unutilized input VAT on purchases of goods and services attributable to its zero-rated sales for the four quarters of calendar year (CY) 2017.

On the other hand, in his Comment, respondent maintains that the Court is correct in denying petitioner's claim for refund, as petitioner failed to comply with the VAT invoicing requirements under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent insists that considering the documents presented by petitioner were not original or certified true copies of the original, such documents should be excluded to form part of petitioner's evidence.

Lastly, respondent asserts that claims for refund are in the nature of a tax exemption which must be construed *strictissimi juris* against a taxpayer. As such, respondent contends that petitioner fell short of proving the veracity of its claim for refund.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

Again, contrary to the argument that the SSDTs and SADs are sufficient evidence to prove petitioner's input VAT on importations, it is clearly stated in Section 110 in relation to Section 112 of the NIRC of 1997, as amended, that in a claim for refund of excess or unutilized input VAT, the creditable input VAT must be evidenced by a **VAT invoice**, to wit:

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.* –
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> *(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: xxx."
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> **SEC. 110.** *Tax Credits.* -
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> A. *Creditable Input Tax.* –
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> (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:

(a) Purchase or importation of goods:

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has been actually paid." *(Emphasis and underscoring supplied)*

In relation thereto, while this Court agrees that computer print-outs may be considered as originals under Rule 130 of the Rules of Court, petitioner was still amiss in failing to timely prove the authenticity of the denied commercial invoices attached to Exhibits "P-689" to "P-744", "P-746" to "P-747" to "P-805", "P-806" to "P-866", "P-867" to "P-924", "P-926" to "P1063", for being mere photocopies as determined by the ICPA. To stress, the foregoing exhibits were denied admission in the Resolution dated December 2, 2019, however, in the present case, petitioner again seeks their reconsideration in the guise of the present Motion for Reconsideration of the assailed Decision.

Accordingly, the input VAT corresponding to the said invoices are still disallowed from petitioner's claim.

The Court reiterates that it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[3] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[4] Thus, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the

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[3] *Citibank N.A. v. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997.
[4] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

documentary and evidentiary requirements.[5] Strict adherence to the conditions prescribed by law is required of the taxpayer.[6]

In view of the foregoing, the Court finds no justifiable reason to change or modify the Decision assailed by petitioner.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[5] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015; *citing J.R.A. Philippines, Inc. v. CIR*, G.R. No. 171307, August 28, 2013.

[6] *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.