REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*EN BANC*

*********

**PHILEX MINING CORPORATION,**
Petitioner,

**CTA EB No. 2497**
(CTA Case No. 10037)

***Present:***

**DEL ROSARIO,** P.J.,
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,**
**MODESTO-SAN PEDRO,**
**REYES-FAJARDO,** and
**CUI-DAVID,** JJ.

**- versus -**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

***Promulgated:***

SEP 29 2022 11:58am

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# DECISION

**UY, J.:**

Before the Court *En Banc* is a *Petition for Review*[1] filed on July 22, 2021 by petitioner, Philex Mining Corporation, against respondent, Commissioner of Internal Revenue (CIR), praying that the *Decision* dated January 5, 2021, and the *Resolution* dated June 15, 2021, in CTA Case No. 10037, entitled *"Philex Mining Corporation, petitioner, v. Commissioner of Internal Revenue, respondent"*, be reversed and set aside, and another one be rendered ordering respondent to refund or issue in favor of petitioner a Tax Credit Certificate (TCC) in the amount of ₱21,529,612.72, representing excess and unutilized input value-added tax (VAT) attributable to zero-rated sales during the four (4) quarters of calendar year (CY) 2017. The dispositive portions thereof

[1] EB Docket, pp. 6 to 24.

respectively read:

***Decision* dated January 5, 2021:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

***Resolution* dated June 15, 2021:**

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

## THE FACTS

Petitioner is a domestic corporation duly organized and existing under Philippine laws with principal place of business at 2/F Launchpad, Reliance cor. Sheridan Streets, Mandaluyong City. It is registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. OCN 8RC0000699737E dated October 7, 2016, with Taxpayer Identification No. (TIN) 000-283-731-00000.

On the other hand, respondent is the duly appointed CIR, represented by the Litigation Division of the BIR National Office, who may be served with pleadings and court processes at 7th Floor, Litigation Division, BIR National Office Building, BIR Road, Diliman, Quezon City. He is empowered to perform the duties of said office including, among others, the power to decide, approve and grant claims for refund or tax credit of erroneously paid or overpaid taxes, as provided by law.

On October 28, 2018, petitioner filed with the BIR VAT Credit Audit Division (VCAD) an administrative claim for refund, with attached Application for Tax Credits/Refunds (BIR Form No. 1914) and supporting documents, for the refund or tax credit of input VAT amounting to ₱68,882,568.83 for CY 2017.

Subsequently, on January 31, 2019, petitioner received the letter (VAT Refund Notice) dated January 16, 2019 from respondent, partially granting its request for refund of excess and unutilized input VAT for the four (4) quarters of CY 2017 in the amount of ₱46,729,507.99, computed as follows:

| | |
|---|---|
| VAT Refund Claimed | ₱68,882,568.83 |
| Less: Deductions | (₱22,153,060.84) |
| **Net Allowable VAT Refund** | **₱46,729,507.99** |

The administrative claim was partially denied on the basis of the recommendation by certain revenue officers as follows:

> "The Revenue Officers recommended the issuance of VAT refund in the reduced amount of Php62,149,937.30, net of deductions for Php11,454,157.90 as shown below:
>
> xxx xxx xxx
>
> Final evaluation of the case disclosed that there was substantial compliance with the requirements set forth in processing claims for tax credit/refund including documentary requirements under Revenue Memorandum Order Nos. 16 & 22-2007 and RMC No. 29-2009 & 17-2018.
>
> However, input VAT attributable to export sales of Php15,420,429.31 arising from transactions without valid documentary proof of inward remittances, was deducted from the herein claim, recomputed and summarized in the attached Annex 'A'."

On February 28, 2019, petitioner filed a *Petition for Review*, docketed as CTA Case No. 10037, entitled *"Philex Mining Corporation v. Commissioner of Internal Revenue"*. The case was assigned to the Second Division of this Court (Court in Division).

On April 22, 2019, respondent filed his *Answer*, interposing certain special and affirmative defenses, to wit:

(a) Petitioner failed to show proof of compliance with the requirements under Section 112(A) of the National Internal

Revenue Code (NIRC) of 1997, as amended, particularly pertaining to zero-rated sales;

(b) Bereft of the documentary and invoicing requirements for input VAT refund, petitioner's claim must be denied;

(c) Tax refunds are in the nature of tax exemptions which result to loss of revenue for the government and these exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only in a clear and unequivocal provision of law on the basis of language too plain to be mistaken; and

(d) Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

Meanwhile, the Pre-Trial Conference was set and held on May 23, 2019. On June 19, 2019, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI). Subsequently, the *Pre-Trial Order* dated July 15, 2019 was issued, approving the JSFI, and thereby deeming the pre-trial terminated.

The trial of the case then proceeded.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Sylvia D. Delos Santos, petitioner's Accounting Manager; (2) Atty. Maria Myla S. Maralit, the Court-commissioned Independent Certified Public Accountant (ICPA); and (3) Eileen C. Rodriguez, petitioner's Group Manager for Corporate Treasury.

For his part, respondent likewise presented testimonial and documentary evidence. He proffered the sole testimony of Dexter Bustillos, a revenue officer of the BIR.

Thereafter, petitioner filed its *Memorandum* on June 30, 2020, while respondent filed his *Memorandum* on July 2, 2020. In the *Resolution* dated July 13, 2020, CTA Case No. 10037 was submitted for decision.

On January 5, 2021, the Court in Division rendered the assailed *Decision*[2] denying petitioner's *Petition for Review* for lack of merit.

[2] EB Docket, pp. 29 to 62; Division Docket – Vol. II (CTA Case No. 10037), pp. 722 to 755.

Dissatisfied with the Court in Division's *Decision*, petitioner filed a *Motion for Reconsideration*[3] on January 21, 2021, praying that the Court in Division reverse and reconsider its *Decision* dated January 5, 2021, and rule that petitioner has sufficiently proven its Amortization of Input VAT on Capital Goods Exceeding ₱1,000,000.00 and its Input VAT from Importation of Goods other than Capital Goods, and render judgment ordering respondent to refund or issue in favor of petitioner a TCC in the amount of ₱21,529,612.72 representing the portion of petitioner's excess and unutilized input VAT on purchases of goods and services attributable to its zero-rated sales for the four (4) quarters of CY 2017 that respondent deducted from petitioner's administrative claim for refund dated October 25, 2018.

In the assailed *Resolution*[4] dated June 15, 2021, the Court in Division denied petitioner's *Motion for Reconsideration*.

Thus, on July 22, 2021, petitioner filed the instant *Petition for Review*[5] docketed as CTA EB No. 2497.

In the *Resolution*[6] dated September 28, 2021, the Court *En Banc* ordered respondent to file his Comment to the *Petition for Review*. On October 27, 2021, respondent filed his *Comment/ Opposition (Re: Petition for Review dated 12 July 2021)*,[7] through registered mail, which was received by the Court *En Banc* on November 5, 2021.

On November 24, 2021, the Court *En Banc* issued the *Resolution*[8] submitting the case for decision.

Hence, this *Decision*.

## ISSUES

Petitioner raises the following issues[9] for resolution of the Court *En Banc*, to wit:

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[3] Division Docket – Vol. II (CTA Case No. 10037), pp. 760 to 767.
[4] EB Docket, pp. 64 to 68; Division Docket – Vol. II (CTA Case No. 10037), pp. 813 to 817.
[5] EB Docket, pp. 6 to 24.
[6] EB Docket, pp. 109 to 110.
[7] EB Docket, pp. 111 to 116.
[8] EB Docket, pp. 119 to 120.
[9] EB Docket, p. 12.

a) Whether the invoicing requirements stated under Sections 110 and 113 of the NIRC of 1997, as amended, apply to imported goods.

b) Whether the Statement of Settlement of Duties and Taxes (SSDTs) and Single Administrative Documents (SADs) are sufficient to prove payment of input VAT on petitioner's importations.

***Petitioner's arguments:***

Petitioner argues that neither the law nor regulations require the presentation of invoices in order to substantiate the input VAT on imported goods. According to petitioner, the invoicing requirements stated under Sections 110 and 113 of the NIRC of 1997, as amended, cannot apply to input VAT credits for transactions involving importation of goods considering that the vendors of imported goods are foreign entities not subject to Philippine laws and are not bound to comply with Philippine tax laws. Thus, the foreign vendors cannot be expected to comply with the invoicing requirements under the aforestated provisions, nor are they obliged to impose VAT on the sale of their goods.

Likewise, petitioner asserts that pursuant to Section 105 of the NIRC of 1997, as amended, when it comes to the importation of goods, it is the "person who imports goods", and not the vendor, who is subject to VAT.

Moreover, petitioner invokes Section 107 of the NIRC of 1997, as amended, in arguing that it is the Bureau of Customs (BOC), and not the foreign vendor, who determines the correct computation of the VAT that the importer is obligated to pay.

Petitioner also claims that Section 113 of the NIRC of 1997, as amended, clearly imposes the obligation to issue a VAT invoice or VAT official receipt on a "VAT-registered person". Given that the foreign vendor is not subject to VAT pursuant to Section 105 of the NIRC of 1997, as amended, nor to the jurisdiction of the BIR, then the foreign vendor could never be the VAT-registered person contemplated in Section 113 of the NIRC of 1997, as amended.

Petitioner also points out that Section 113(B) of the NIRC of 1997, as amended, which requires the VAT invoice or VAT official receipt to state that the seller is a VAT-registered person and to indicate the seller's TIN, cannot apply to a foreign seller who is not required to register with the BIR nor to obtain a TIN. The amount of VAT also cannot be shown in the invoice or official receipt issued by the foreign seller because pursuant to Section 107 of the NIRC of 1997, as amended, it is the BOC who will compute the VAT to be paid by the importer.

Petitioner also asserts that for importation of goods, Section 4.110-8 of Revenue Regulations (RR) No. 16-2005 provides that it is sufficient for the taxpayer to present either its (1) Import Entry and Internal Revenue Declaration (IEIRD), or (2) other equivalent document showing actual payment of VAT on the imported goods. Petitioner claims that SSDTs and SADs are sufficient to prove petitioner's payment of VAT on importations.

Petitioner points out that under Revenue Memorandum Circular (RMC) No. 047-19 and Revenue Memorandum Order (RMO) No. 025-19, and Customs Memorandum Order (CMO) No. 028-14, the BIR and the BOC, respectively, consider the SSDT and SAD as the equivalent of IEIRDs for substantiating input VAT on importations.

Finally, petitioner argues that the photocopies of the commercial invoices could have been admitted under Section 4, Rule 130 of the Revised Rules on Evidence.

***Respondent's counter-arguments:***

Respondent counter-argues that as explained by the Court in Division, petitioner failed to substantiate its claim for refund. Respondent points out that petitioner failed to show that the Amortization Schedule of Imported Capital Goods exceeding ₱1,000,000.00 and the related SSDTs, SADs and commercial invoices were authentic considering that the documents are mere photocopies. Likewise, petitioner also failed to substantiate the Input VAT from Importation of Goods other than Capital Goods considering that the documents in support thereof are also mere photocopies.

Moreover, respondent asserts that considering that the documents presented by petitioner are not original nor certified true copies of the original, the Court in Division was correct in excluding such documents to form part of petitioner's evidence.

Respondent also states that petitioner failed to show that the latter's input VAT attributable to zero-rated sales exceeded its output VAT.

Lastly, respondent claims that since tax refunds are regarded as tax exemptions, these are construed *strictissimi juris* against the person claiming the exemption.

## THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is partly meritorious.

In a claim for refund or issuance of a TCC, the following requisites must be complied with by the taxpayer-applicant in order to successfully obtain a credit/refund of input VAT:

<u>Prescriptive period for the filing of the administrative and judicial claims:</u>

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[10]

2. that in case of full or partial denial of the refund claim, rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim has been filed with the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the decision;[11]

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[10] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.
[11] Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law provides:

"In proper cases, the Commissioner shall grant a refund for creditable input taxes **within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application** filed in accordance with Subsections (A) and (B) hereof; *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

<u>Taxpayer's registration with the BIR:</u>

3. the taxpayer is VAT registered;[12]

<u>In relation to the taxpayer's output VAT, it must be shown:</u>

4. that the taxpayer is engaged in zero-rated or effectively zero-rated sales;[13]

5. that for zero-rated sales under Section 106(A)(2)(a)(1) and (2); 106(B); and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations;[14]

<u>As regards the taxpayer's input VAT being refunded, it must be shown:</u>

6. that input taxes are not transitional input taxes;[15]

7. that the input taxes are due or paid;[16]

8. that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[17] and

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In case of full or partial denial of the claim for tax refund, the taxpayer affected may, **within thirty (30) days from the <u>receipt</u> of the decision** denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

[12] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, supra.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.

9. that the input taxes have not been applied against output taxes during and in the succeeding quarters.[18]

In the instant case, the *first* to *sixth* requisites were fully and/or partially complied with by petitioner, and the Court in Division's findings as to the *first* to *sixth* requisites in the assailed *Decision* dated January 5, 2021 are uncontested by petitioner. The findings are summarized as follows:

*First* requisite – petitioner was able to file its administrative claim for refund with the BIR within two (2) years after the close of the taxable quarter when the sales were made, as shown below:

| CY 2017 | Close of the Taxable Quarter | Last Day to File Administrative Claim | Date of Filing of Administrative Claim |
|---|---|---|---|
| 1st Quarter | March 31, 2017 | March 31, 2019 | October 29, 2018 |
| 2nd Quarter | June 30, 2017 | June 30, 2019 | |
| 3rd Quarter | September 30, 2017 | September 30, 2019 | |
| 4th Quarter | December 31, 2017 | December 31, 2019 | |

*Second* requisite – petitioner received respondent's letter (VAT Refund Notice) dated January 16, 2019,[19] which partially granted petitioner's claim for refund, on January 31, 2019. Petitioner had thirty (30) days from receipt of the decision on January 31, 2019,[20] or until March 2, 2019, to file an appeal before the CTA. Petitioner was able to file its *Petition for Review* in CTA Case No. 10037 on February 28, 2019.

*Third* requisite – petitioner is registered with the BIR under Certificate of Registration No. OCN 8RC0000699737E dated October 7, 2016, with TIN 000-283-731-00000.

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[18] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, supra.

[19] The decision was rendered within the ninety (90)-day period counted from October 29, 2018. Respondent had ninety (90) days from October 29, 2018, or until January 27, 2019, within which to decide on petitioner's claim for refund.

[20] The second paragraph of Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law provides: "In case of full or partial denial of the claim for tax refund, the taxpayer affected may, **within thirty (30) days from the receipt of the decision** denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

*Fourth* and *fifth* requisites – petitioner was able to establish that its export sales of goods for CY 2017, in the reduced amount of ₱8,988,058,805.74 (out of the total reported zero-rated sales of ₱10,714,206,566.18), qualify as VAT zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

*Sixth* requisite – records show that petitioner is not a new VAT-registered entity; thus, in the absence of any indication that the claimed input taxes are transitional input taxes, the Court holds that petitioner has complied with the *sixth* requisite.

Meanwhile, the *seventh* requisite is put in issue by petitioner in the instant *Petition*, and the resolution thereof will consequently affect the *eighth* and *ninth* requisites.

***The invoicing requirements stated under Sections 110 and 113 of the NIRC of 1997, as amended, do not apply to imported goods.***

Petitioner claims that the invoicing requirements stated under Sections 110 and 113 of the NIRC of 1997, as amended, cannot apply to input VAT credits for transactions involving importation of goods considering that the vendors of imported goods are foreign entities not subject to Philippine laws and are not bound to comply with Philippine tax laws.

We agree with petitioner.

Section 110(A) of the NIRC of 1997, as amended, provides:

> "SECTION 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:

(a) Purchase or importation of goods:

xxx xxx xxx"

Meanwhile, Sections 113(A) and (B) of the NIRC of 1997, as amended, provide:

"SECTION 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 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:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchases, customer or client." *(Emphasis supplied)*

The provisions above are implemented, among others, by Section 4.110-1 of RR No. 16-2005 which states:

"SEC. 4.110-1. *Credits For Input Tax. — "Input Tax"* means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

> Any input tax on the following transactions **evidenced by a VAT invoice or official receipt issued by a VAT-registered person** in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:
>
> (a) Purchase or importation of goods
>
> xxx xxx xxx " *(Emphasis supplied)*

Further, Section 4.110-8(a) of RR No. 16-2005 provides for the substantiation requirements of input tax credits on importation of goods, as follows:

> "SEC. 4.110-8. *Substantiation of Input Tax Credits.* —
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the **<u>importation of goods – import entry or other equivalent document showing actual payment of VAT on the imported goods</u>**.
>
> (2) For the **domestic purchase of goods and properties – invoice showing that information required under Secs. 113 and 237 of the Tax Code**." *(Emphasis and underscoring supplied)*

As can be gleaned from the foregoing provisions, it is the **VAT-registered person** who is required to issue a VAT invoice for every sale, barter or exchange of goods or properties. Corollary thereto, the invoicing requirements under Sections 110 and 113 of the NIRC of 1997, as amended, are not applicable to imported goods sold by foreign sellers. Foreign sellers, which in this case are the sellers of the capital goods exceeding ₱1,000,000.00 which were acquired by the purchaser through importation, and the sellers of the imported goods other than capital goods, are not bound to comply with the VAT invoicing requirements under Section 113 of the NIRC of 1997, as amended, because they are not subject to Philippine tax laws. As the foreign sellers of the imported goods are not registered with the BIR and are not VAT-registered, they cannot be expected to issue VAT invoices.

In fact, in Section 4.110-8(a) of RR No. 16-2005, the BIR made a distinction between the substantiation requirements of input tax credits for importation of goods and domestic purchase of goods and properties. A VAT invoice is required only for domestic purchase of goods and properties, while an import entry or other equivalent document showing actual payment of VAT on the imported goods is required for importation of goods. Had the BIR intended that a VAT invoice be also required for the importation of goods, then it should not have made a distinction between the substantiation requirements of input tax credits for importation of goods and domestic purchase of goods and properties.

In *Commissioner of Internal Revenue v. Philex Mining Corporation*,[21] the Supreme Court held that in substantiating input tax credits, importations must be evidenced by import entry declarations or any equivalent document, while domestic purchases must be evidenced by VAT invoices or receipts, to wit:

> "From the foregoing, it is apparent that **importation of non-capital goods must be evidenced by import entry declarations or any equivalent documents; and the domestic purchase of services, by VAT official receipts** showing: (1) that the seller is a VAT-registered person; (2) the Tax Identification Number (TIN) of the seller; (3) the word "zero-rated sale" was written or printed prominently on the receipt in case of zero-rated sales; (4) the date of transaction, nature of service, as well as the name, business style, if any, and address of the purchaser; and (5) the TIN of the purchaser. x x x" *(Emphasis supplied)*

Thus, it is clear that Sections 110 and 113 of the NIRC of 1997, as amended, are applicable only to VAT-registered persons and not

[21] G.R. No. 230016, November 23, 2020.

to foreign sellers who are not subject to Philippine tax laws and are not VAT-registered.

***SSDTs and SADs are sufficient to prove payment of input VAT on petitioner's importations.***

Having established that Sections 110 and 113 of the NIRC of 1997, as amended, are not applicable to imported goods, We shall now proceed to discuss the substantiation requirements of input tax credits for imported goods.

Under Section 4.110-8(a)(1) of RR No. 16-2005 cited above, input taxes for the importation of goods must be substantiated by the import entry or other equivalent document showing actual payment of VAT on the imported goods.

In *Taganito Mining Corporation v. Commissioner of Internal Revenue*,[22] the Supreme Court emphasized that an IEIRD is the required document to substantiate the payment of duties and taxes on imported goods, thus:

> "Even assuming that the proper year was indicated, these official receipts would still not comply with the substantiation requirements provided by law. Indeed, under Sections 100 (A) and 113 (A) of the NIRC, any input tax that is subject of a claim for refund must be evidenced by a VAT invoice or official receipt. **With regard to the importation of goods or properties, however, Section 4.110-8 of R.R. No. 16-05, as amended, further requires that an import entry or other equivalent document showing actual payment of VAT on the imported goods must also be submitted**, to wit:
>
> xxx xxx xxx
>
> In relation to this requirement, Customs Administrative Order No. 2-95 provides:
>
> > 2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by

[22] G.R No. 201195, November 26, 2014.

> the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, **the amount of duty and tax collected including other required information must be machine validated directly on the following import documents and signed by the duly authorized bank official**:
>
> > 2.3.1 **Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes.**
>
> xxx xxx xxx

From the foregoing, it is apparent that **an IEIRD is required to properly substantiate the payment of duties and taxes on imported goods**. Considering that the petitioner failed to submit the import entries relevant to its claim, the CTA did not err in ruling that the petitioner's claim was not sufficiently proven." *(Emphasis supplied)*

Apart from the IEIRD, Section 4.110-8(a)(1) of RR No. 16-2005 provides that other equivalent document showing actual payment of VAT on the imported goods may be presented to substantiate input tax credits for imported goods.

Under II(3) of RMC No. 047-19, claims for refund of unutilized input VAT on importation may be supported by the IEIRD and/or the SSDT and SAD, as follows:

"II. DOCUMENTS TO BE SUBMITTED BY THE TAXPAYER-CLAIMANTS UPON FILING OF THE APPLICATIONS FOR VAT REFUND

xxx xxx xxx

3. Claims for refund of unutilized input VAT on importations shall be supported with a "VAT Payment Certification" issued by the Revenue Accounting Division (RAD) of the Bureau of Customs (BOC), including the supporting Import Entry and Internal Revenue Declarations (IERD) **and/or Single Administrative**

> **Document (SAD), Statement of Settlement of Duties and Taxes (SSDT)**. Only the duly authenticated copies of documents by the BOC shall be accepted for processing and considered in the computation of refundable amount." *(Emphasis supplied)*

Likewise, under III(A)(3) of CMO No. 028-14, SSDTs and SADs are sufficient proof of payment of input VAT on importations, as follows:

> "III. *Operational Provisions*
>
> A. Upon receipt of the docket from the BIR approving the claim of a particular importer for refund of the input VAT on his importation, the Tax Credit Secretariat (TCS) shall check that the following supporting documents are attached to the docket forwarded by the BIR:
>
> xxx xxx xxx
>
> 3. Original or Certified True Copies of the Import Entry and Internal Revenue Declarations (IEIRDs), BOC Official Receipts (BCORs) **or the Statement of Settlement of Duties and Taxes, Single Administrative Documents** and List of Importations for the period of the claim." *(Emphasis supplied)*

Further, under Section 2(a) of CMO No. 29-15, the use of the IEIRD is discontinued and is replaced by the SAD, thus:

> "Section 2. Operational Provisions.
>
> a) The use of the Import Entry and Internal Revenue Declaration (IEIRD) or BC Form 236 is discontinued and **in its place shall be the Single Administrative Document (SAD)** secured through the e2m Customs System and printed. The SAD shall serve as the entry declaration as required by existing rules and regulations." *(Emphasis supplied)*

Considering the discussion above, it is evident that SSDTs and SADs are sufficient to prove actual payment of VAT on the imported goods.

Accordingly, the Court *En Banc* will now evaluate petitioner's compliance with the *seventh* to *ninth* requisites in order to successfully obtain a credit/refund of input VAT.

***Seventh requisite: the input taxes being claimed were due or paid.***

The *seventh* requisite in claiming a VAT refund pertains to the required proof that the input taxes claimed during the four (4) quarters of CY 2017 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, and implemented by, among others, Sections 4.110-1 and 4.110-8(a) of RR No. 16-2005, cited above.

From the prior disquisitions, in order to be entitled to input tax credits, importation of goods must be supported by IEIRDs or SADs and SSDTs, while domestic purchases of goods must be supported by VAT invoices showing the information required under Sections 113 and 237 of the NIRC of 1997, as amended.

In the instant case, petitioner reported a total input VAT of ₱73,604,095.37 from its purchase of capital goods exceeding ₱1,000,000.00, domestic purchases of goods other than capital goods, and importation of goods other than capital goods. Out of the ₱73,604,095.37, the amount of ₱21,529,612.72 is the subject of petitioner's present claim for refund or issuance of a TCC, as follows:

| | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter | Total |
|---|---|---|---|---|---|
| Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter | ₱29,680,239.07 | ₱28,735,380.19 | ₱48,807,419.49 | ₱57,406,696.17 | ₱164,629,734.92 |
| Add: Input Tax due on Purchase of Capital Goods exceeding ₱1 Million | 1,167,924.12 | 22,788,035.00 | 12,242,865.00 | 5,864,411.00 | 42,063,235.12 |
| Less: Input Tax on Purchases of Capital | 28,735,380.19 | 48,807,419.49 | 57,406,696.17 | 59,413,771.12 | 194,363,266.97 |

| | | | | | |
|---|---|---|---|---|---|
| Goods exceeding ₱1 Million deferred for the succeeding period | | | | | |
| Amortization of Input Tax on Capital Goods exceeding ₱1,000,000.00 | 2,112,783.00 | 2,715,995.70 | 3,643,588.32 | 3,857,336.05 | 12,329,703.07 |
| Add: Current Input Tax on: | | | | | |
| Domestic Purchases of Goods Other than Capital Goods | 30,970.08 | 36,332.19 | 20,566.36 | 255,678.74 | 343,547.37 |
| Importation of Goods Other than Capital Goods | 13,164,717.00 | 17,583,290.97 | 17,047,628.96 | 13,135,208.00 | 60,930,844.93 |
| Total | 13,195,687.08 | 17,619,623.16 | 17,068,195.32 | 13,390,886.74 | 61,274,392.30 |
| **Total Input Taxes for the Period** | **₱15,308,470.88** | **₱20,335,618.86** | **₱20,711,783.64** | **₱17,248,222.79** | **₱73,604,095.37** |
| Less: Output Tax Due | 728,693.97 | 619,872.98 | 2,459,780.14 | 913,233.28 | 4,721,526.37 |
| **Excess Input VAT** | **₱14,579,830.11** | **₱19,715,745.88** | **₱18,252,003.50** | **₱16,334,989.51** | **₱68,882,569.00** |
| Less: Allowable Input VAT for TCC/Refund per BIR Letter dated January 16, 2019 | | | | | 46,729,507.99 |
| Disallowance per VCAD verification | | | | | 623,448.12 |
| **Excess Input VAT claimed for refund** | | | | | **₱21,529,612.89**[23] |

In the assailed *Decision* dated January 5, 2021, the Court in Division disallowed the following:

1. Amortization of input VAT on capital goods exceeding ₱1,000,000.00 in the amount of ₱12,329,703.07 on the ground that the corresponding commercial invoices attached to the BOC SSDT/SAD, marked as Exhibits "P-926" to "P-1063", were denied admission by the Court in Division in the *Resolution* dated December 2, 2019 for being mere photocopies;

2. Input VAT from domestic purchases of goods other than capital goods in the amount of ₱286,762.58 due to petitioner's failure to meet the invoicing and substantiation

[23] ₱0.17 difference per *Petition for Review*.

requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended; and

3. Input VAT from importation of goods other than capital goods in the amount of ₱60,930,844.93 on the ground that the 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 in the Court in Division's *Resolution* dated December 2, 2019 for being mere photocopies.

Further, in the assailed *Resolution* dated June 15, 2021, the Court in Division reiterated that contrary to petitioner's 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 113 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.

In the instant *Petition*, petitioner puts in issue the Court in Division's disallowance of the: (1) amortization of input VAT on capital goods exceeding ₱1,000,000.00 in the amount of ₱12,329,703.07; and (2) input VAT from importation of goods other than capital goods in the amount of ₱60,930,844.93.

According to petitioner, while invoices that comply with the requirements stated under Sections 110 and 113 of the NIRC of 1997, as amended, are generally recognized as the supporting documents for a taxpayer's input VAT credits, these requirements could not realistically be made to apply to input VAT credits for transactions involving importation of goods.

We find for petitioner.

As discussed, above, Sections 110 and 113 of the NIRC of 1997, as amended, are applicable only to VAT-registered persons and not to foreign sellers who are not subject to Philippine tax laws, and are not VAT-registered. Thus, SSDTs and SADs are sufficient to prove actual payment of VAT on the imported goods.

Consequently, with respect to the amortization of input VAT on capital goods exceeding ₱1,000,000.00 in the amount of ₱12,329,703.07, it is of no moment that the **corresponding commercial invoices** attached to the BOC SSDTs/SADs, marked as Exhibits "P-926" to "P-1063", are mere photocopies because SSDTs and SADs are sufficient to prove actual payment of VAT on the imported goods.

In support of its input VAT claim with respect to the amortization of input VAT on capital goods exceeding ₱1,000,000.00 in the amount of ₱12,329,703.07, petitioner presented its Amortization Schedule of Imported Capital Goods Exceeding ₱1,000,000.00 and the related SSDTs, SADs and commercial invoices.

Upon examination of the said documents, the ICPA disallowed the amount of ₱333,682.53 which pertains to the input VAT from the importation of capital goods that is not substantiated and supported with import entry or other equivalent document showing the actual payment of VAT on the importation of capital goods, as follows:

| Exhibit | Customs Reference Number | Total Value Subject to VAT | VAT | Input VAT Qualified for Amortization | Input VAT Not Qualified for Amortization | Input VAT Claimed per Amortization Schedule | Total Amortization per Recomputation | Disallowed Input VAT | Reason for Disallowance |
|---|---|---|---|---|---|---|---|---|---|
| "P-972" | C 11369 | ₱4,358,240.84 | ₱540.578.00 | ₱540,478.00 | ₱100.00 | ₱108,115.60 | ₱108,095.60 | ₱20.00 | Difference in input VAT claimed per Amortization Schedule and total amortization per recomputation |
| - | - | 1,582,016.67 | 189,842.00 | - | 189,842.00 | 31,840.33 | - | 31,640.33 | No supporting documents |
| - | C 271939 | 555,691 30 | 63,180 00 | - | 63.180 00 | 12,636 00 | - | 12,636.00 | No supporting documents |
| - | C 253513 | 996,940.75 | 122,395.00 | - | 122,395.00 | 24,479.00 | - | 24,479.00 | No supporting documents |
| "P-1059" | C 104507 | 3,398,646.25 | 504,545.00 | - | 504,545.00 | 100,909.00 | - | 100,909.00 | Supported only with photocopy of import documents |
| "P-1060" | C 128438 | 266,068.95 | 36,142.00 | - | 36,142.00 | 7,226.40 | - | 7,228.40 | Supported only with photocopy of import documents |
| "P-1061" | C 149376 | 658,244.57 | 106,728.00 | - | 106,728.00 | 21,345.60 | - | 21,345.60 | Supported only with photocopy of import documents |
| "P-1062" | C 338632 | 4,495,733.33 | 539,488.00 | - | 539,488.00 | 107,897.60 | - | 107,897.60 | Supported only with photocopy of commercial invoice |
| "P-1063" | C 337586 | 1,146,941.67 | 137,633.00 | - | 137,633.00 | 27,526.60 | - | 27,526.60 | Supported only with photocopy of commercial invoice |
| TOTAL | | | | | | | | ₱333,682.53 | |

Thus, the total amount of ₱333,682.53 shall be disallowed for petitioner's failure to meet the invoicing and substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Section 4.110-8 of RR No. 16-2005, as amended. *NO*

On the other hand, with respect to the input VAT from importation of goods other than capital goods in the amount of ₱60,930,844.93 which were disallowed on the ground that the 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 in the Court in Division's *Resolution* dated December 2, 2019 for being mere photocopies, it is worth noting that in the Court in Division's *Resolution* dated December 2, 2019, what was disallowed were the **commercial invoices** issued by the suppliers and attached to the BOC SSDT/SAD marked as Exhibits "P-689" to "P-744" and "P-746" to "P-924" and not the SSDTs/SADs.

In support of its claimed input VAT from importation of goods other than capital goods in the amount of ₱60,930,844.93, petitioner submitted various SSDTs, BOC SADs and commercial invoices.

Upon examination of the said documents, the ICPA disallowed the amount of ₱149,961.00 which pertains to the input VAT from the importation of goods other than capital goods that is not substantiated and supported with import entry or other equivalent document showing the actual payment of VAT on the imported goods, as follows:

| Exhibit | Customs Reference Number | Total Value Subject to VAT | VAT | Disallowed Input VAT | Reason for Disallowance |
|---|---|---|---|---|---|
| "P-744" | C 196847 | ₱49,950.00 | ₱5,994.00 | ₱5,994.00 | Supported only with photocopy of import documents |
| - | - | 31,558.33 | 3,787.00 | 3,787.00 | No supporting documents |
| "P-746" | C 44628 | 36,866.67 | 4,424.00 | 4,424.00 | Supported only with photocopy of import documents |
| "P-866" | C 149059 | 1,131,300.00 | 135,756.00 | 135,756.00 | No SSDT |
| **TOTAL** | | | | **₱149,961.00** | |

Thus, the total amount of ₱149,961.00 shall be disallowed for petitioner's failure to meet the invoicing and substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Section 4.110-8 of RR No. 16-2005, as amended.

In sum, out of petitioner's reported total input VAT of ₱73,604,095.37 for the four (4) quarters of CY 2017, only the amount of ₱72,833,689.09, as computed below, represents petitioner's substantiated input VAT which will be considered for the purpose of petitioner's compliance with the *eighth* and *ninth* requisites:

| | | |
|---|---|---|
| Input VAT for the period | | ₱73,604,095.37 |
| Less: Disallowances (failure to comply with substantiation requirements) | | |
| Domestic purchases of goods and services | 286,762.58 | |
| Amortization of input VAT on capital goods exceeding ₱1,000,000.00 | 333,682.53 | |
| Importation of goods other than capital goods | 149,961.00 | |
| Difference in the amount per *Petition* against VAT Returns[24] | 0.17 | 770,406.28 |
| **Valid input VAT** | | **₱72,833,689.09** |

***Eight requisite: the input taxes being claimed are attributable to petitioner's zero-rated sales.***

The *eighth* requisite in claiming a VAT refund requires that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

For the subject period of claim, petitioner reported sales subject to 12% VAT and zero-rated sales in the following amounts:

| **Particulars** | **Amount** |
|---|---|
| Subject to 12% VAT | ₱ 39,346,053.08 |
| Zero-rated sales | 10,714,206,566.18 |
| **Total Sales** | **₱ 10,753,552,619.26** |

[24] Amount of ₱21,529,612.72 in the *Petition* less the amount of ₱21,529,612.89 per VAT returns.

nb

Considering that petitioner's input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱72,833,689.09 shall be allocated proportionately on the basis of the volume of its total sales, in accordance with Section 112(A) of the NIRC of 1997, as amended, thus:

| | |
|---|---|
| Sales subject to 12% VAT | ₱ 39,346,053.08 |
| Divided by total sales for the period | 10,753,552,619.26 |
| Multiply by total valid input VAT | 72,833,689.09 |
| **Valid input VAT attributable to sales subject to 12% VAT** | **₱ 266,490.37** |

| | |
|---|---|
| Valid zero-rated sales | ₱8,988,058,805.74[25] |
| Divided by total sales for the period | 10,753,552,619.26 |
| Multiply by total valid input VAT | 72,833,689.09 |
| **Valid input VAT attributable to valid zero-rated sales** | **₱ 60,876,019.65** |

Consequently, only the input VAT of ₱60,876,019.65 can be attributed to the substantiated zero-rated sales of ₱8,988,058,805.74.

Further, petitioner incurred output VAT liability as follows:

| CY 2017 | Taxable Sales | Output VAT | Exhibit |
|---|---|---|---|
| 1st Quarter | ₱ 6,071,999.75 | ₱ 728,639.97 | "P-32-B" |
| 2nd Quarter | 5,165,608.17 | 619,872.98 | "P-33-B" |
| 3rd Quarter | 20,498,167.83 | 2,459,780.14 | "P-34-B" |
| 4th Quarter | 7,610,277.33 | 913,233.28 | "P-35-B" |
| **Total** | **₱39,346,053.08** | **₱4,721,526.37** | |

Considering that petitioner's valid input VAT allocated to sales subject to 12% VAT in the amount of ₱266,490.37 is not enough to cover the output VAT liability, the input VAT attributable to petitioner's valid zero-rated sales in the amount of ₱60,876,019.65 shall then be utilized against the remaining output VAT liability in the amount of ₱4,455,036.00. Consequently, only the remaining input VAT of ₱56,420,983.65 can be allocated to the entire valid zero-rated sales of petitioner, computed as follows:

[25] Per computation under the *fourth* and *fifth* requisites.

| | |
|---|---:|
| Output VAT due | ₱ 4,721,526.37 |
| Valid input VAT attributable to sales subject to 12% VAT | 266,490.37 |
| **Output VAT still due** | **₱ 4,455,036.00** |

| | |
|---|---:|
| Valid input VAT attributable to valid zero-rated sales | ₱60,876,019.65 |
| Less: output VAT still due | 4,455,036.00 |
| **Excess valid input VAT attributable to valid zero-rated sales** | **₱56,420,983.65** |

Thus, for purposes of the *eighth* requisite, the excess input VAT attributable to petitioner's valid zero-rated sales is only ₱56,420,983.65.

***Ninth requisite: petitioner's claimed input taxes were not applied against any output taxes nor carried over to succeeding periods.***

Having determined that petitioner had excess input VAT attributable to its zero-rated sales, We shall proceed to determine whether the same was not applied against its output VAT liability during and in the succeeding quarters.

In this case, petitioner's claimed input VAT for the four (4) quarters of CY 2017 amounting to ₱21,529,612.72[26] representing excess and unutilized input VAT attributable to zero-rated sales during the four (4) quarters of CY 2017 was not carried over by petitioner in its succeeding Quarterly VAT Returns because the input VAT refund originally claimed in the amount of ₱68,882,568.83[27] was

26

| | |
|---|---:|
| Input VAT refund claimed | ₱68,882,568.83 |
| Disallowed per VCAD certification – disallowed input taxes | (622,357.18) |
| Disallowed per VCAD certification – additional output VAT assessed on other income | (1,090.94) |
| Amount already refunded by respondent | (46,729,507.99) |
| **Remaining input VAT refund claimed** | **₱21,529,612.72** |

27 Ibid.

deducted as *"VAT Refund/TCC claimed"* in its Original Quarterly VAT Return for the 3rd Quarter of CY 2018,[28] and was not carried over or applied in the succeeding quarters.[29]

In fine, petitioner has sufficiently proven its entitlement to the refund or issuance of TCC in the amount of ₱9,691,475.66 (valid input VAT attributable to valid zero-rated sales of ₱56,420,983.65 less the ₱46,729,507.99 already refunded by respondent).

**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. The *Decision* dated January 5, 2021, and the *Resolution* dated June 15, 2021, rendered by the Second Division of this Court in CTA Case No. 10037, are hereby **MODIFIED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the amount of **₱9,691,475.66**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2017.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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[28] Exhibit "P-8-D", Division Docket – Vol. II (CTA Case No. 10037), pp. 587 to 588.

[29] The input VAT claimed as refund was not added back in the succeeding quarter per Original Quarterly VAT Return for the 4th Quarter of CY 2018, Exhibit "P-8-E", Division Docket – Vol. II (CTA Case No. 10037), pp. 589 to 590.

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
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.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*