REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

CORAL BAY NICKEL CORPORATION, Petitioner,	**CTA CASE NO. 8252**
	Members:
- *versus* -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 14 2014 ; 10:35a.m.

x- -x

AMENDED DECISION

DEL ROSARIO, P.J.:

Submitted before this Court are:

1. petitioner's **"MOTION FOR PARTIAL RECONSIDERATION"** filed on October 21, 2013, with respondent's **"MANIFESTATION"** filed on November 18, 2013, stating that she is adopting the arguments raised in her Motion for Reconsideration filed on October 21, 2013, as her comment; and,

2. respondent's **"MOTION FOR PARTIAL RECONSIDERATION (Re: Decision Promulgated September 12, 2013)"** filed on October 21, 2013, with petitioner's **"COMMENT TO RESPONDENT'S MOTION FOR PARTIAL RECONSIDERATION (To the Decision dated September 12, 2013)"** filed on November 18, 2013.

Both motions for partial reconsideration seek the reevaluation of the September 12, 2013 Decision,[1] the dispositive portion of which reads as follows:

[1] Docket pp. 505-527.

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P12,895,935.44, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales for taxable year 2009.
>
> **SO ORDERED.**"

Respondent's Motion for Partial Reconsideration

Respondent moves that this Court set aside the assailed Decision and that another one be rendered denying the claim for refund in its entirety. Respondent mainly argues that petitioner's judicial claim for refund was prematurely filed since it failed to submit complete documents, in support of its application for refund under Section 112(C)[2] of the 1997 National Internal Revenue Code (NIRC), as amended, in accordance with Revenue Memorandum Order (RMO) No. 53-98.[3] Thus, the premature filing of petitioner's judicial claim for refund warrants dismissal of the instant case for this Court did not acquire jurisdiction.

For its part, petitioner reiterates that it substantiated its claim for refund through the submission of sufficient supporting documents, citing the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*[4] as support.

As emphasized in the assailed Decision, when petitioner filed the administrative claim on November 26, 2010, petitioner simultaneously

---

[2] SEC. 112. *Refunds or Tax Credits of Input Tax.* -
(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

[3] Issued on June 25, 1998, prescribes the documents required for submission by a taxpayer upon audit of his tax liabilities per type of tax, as well as the different mandatory audit reporting requirements to be prepared, submitted and attached to a tax audit docket by a Revenue Officer.

[4] CTA En Banc Case No. 775 (CTA Case No. 7828) promulgated July 24, 2012.

submitted various documents in support thereof. Records do not show that a written notice was sent by the BIR informing petitioner that the documents earlier submitted are incomplete, or requiring petitioner to submit additional documents in order to stop the running of the 120-day period pursuant to Revenue Memorandum Circular No. 029-09. Thus, the 120-day period started and continued to run from the date when petitioner filed its administrative claim as it was on that date that petitioner submitted its documents in support of its claim. Contrary to respondent's proposition, petitioner's judicial claim was not prematurely filed as the same was filed within thirty (30) days from the expiration of the 120-day period, as shown hereunder:

Year 2009	Date of Filing of Administrative Claim	End of 120 days within which to decide the claim	End of 30 days from the expiration of the 120 days	Date of Filing of Judicial Claim
1st Quarter 2nd Quarter 3rd Quarter 4th Quarter	November 26, 2010	March 26, 2011	April 25, 2011	March 31, 2011

Petitioner's Motion for Partial Reconsideration

Petitioner prays that this Court reconsiders the total disallowed amount of ₱3,773,850.70 in its claim for refund on the grounds that the zero-rated sales of petitioner were duly supported by proofs of inward remittances and the difference of sales per returns and per audited financial statement should not affect the claim for input.

This Court finds petitioner's motion partly meritorious.

To recall, in the assailed Decision, this Court found that only the amount of ₱9,203,579,216.42, qualifies for VAT zero-rating under Section 106(A)(2)(a)(1)[5] of the 1997 NIRC, as amended, out of the

[5] "**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);"

₱10,392,421,777.56 zero-rated sales reported by petitioner in its 2009 Quarterly VAT Returns. Details are as follows:

Invoice		Amount per Invoice (in US$)	Equivalent Amount of Invoice in PhP (per general ledger balances)	Amount per Advice of Incoming Foreign Remittance (in US$)	Equivalent Amount of Remittance in PhP (per General Ledger balances)
Exhibit	**Number**				
KK-3	0082	21,671,562.32	1,008,442,809.44	19,504,406.09	907,598,528.50
KK-6	0079	22,568,844.89	1,063,714,797.36	20,311,960.40	957,343,317.63
KK-8	0076	28,484,945.73	1,342,068,218.07	25,636,451.16	1,207,861,396.26
KK-9	0075	32,509,557.07	1,540,725,438.22	29,258,601.36	1,386,652,894.40
KK-12	0072	18,173,963.09	871,187,094.68	18,173,963.09	871,187,094.68
KK-14	0070	15,395,622.54	740,852,752.25	15,395,622.54	740,852,752.25
KK-16	0068	16,874,088.88	814,259,158.91	16,874,088.88	814,259,158.91
KK-17	0067	11,504,710.71	548,878,243.26	11,504,710.71	548,878,243.26
KK-19	0064	11,818,969.23	571,908,102.07	11,818,969.23	571,908,102.07
KK-21	0062	8,528,757.38	411,981,625.24	8,528,757.38	411,981,625.24
KK-25	0058	10,265,430.19	499,536,363.91	10,265,430.19	499,536,363.91
KK-26	0057	6,075,922.27	285,519,739.31	6,075,922.27	285,519,739.31
		203,872,374.30	**9,699,074,342.72**	**193,348,883.30**	**9,203,579,216.42**

Petitioner argues that for some of the invoices with remittances already included by this Court, 90% of the invoice amount in US$ was paid separately while the other portion was paid together with other invoices. Likewise, there were also other invoices combined with other invoices and only one remittance was made. In support thereof, petitioner summarized the composition of the remittances, which cover the invoices not included by this Court, as follows:

	Amount in US$	Amount in PhP not considered by this Court (based on ICPA Report)
Exhibit KK-46		
Invoice No. 0057 (Exhibit KK-26)	6,075,922.27	
90% Remittance (Exhibit KK-55)	(5,468,330.05)	
Credit Memo	(13,688.92)	
Net	593,903.30	
Invoice No. 0067 (Exhibit KK-18)	**589,200.25**	**28,517,881.30**
Remittance per Exhibit KK-46	**1,183,103.55**	

Exhibit KK-43		
Invoice No. 0058 (Exhibit KK-25)	10,265,430.19	
90% Remittance (Exhibit KK-54)	(9,238,887.17)	
Credit Memo	(78,916.10)	
Net	947,626.92	
Invoice No. 0067 (Exhibit KK-15)	**1,264,473.49**	**60,923,597.22**
Remittance per Exhibit KK-43	**2,212,100.41**	
Exhibit KK-41		
Invoice No. 0062 (Exhibit KK-21)	8,528,757.38	
90% Remittance (Exhibit KK-50)	(7,675,881.65)	
Credit Memo	(19,602.16)	
Net	833,273.57	
Invoice No. 0071 (Exhibit KK-13)	**3,148,765.10**	**151,364,287.12**
Remittance per Exhibit KK-41	**3,982,038.67**	
Exhibit KK-38		
Invoice No. 0064 (Exhibit KK-19)	11,818,969.23	
90% Remittance (Exhibit KK-47)	(10,637,072.31)	
Credit Memo	(63,110.62)	
Net	1,118,786.30	
Invoice No. 0073 (Exhibit KK-11)	**8,068,604.48**	**394,135,191.64**
Remittance per Exhibit KK-38	**9,187,390.78**	
Exhibit KK-37		
Invoice No. 0067 (Exhibit KK-17)	11,504,710.71	
90% Remittance (Exhibit KK-45)	(10,354,239.64)	
Credit Memo	(44,144.10)	
Net	1,106,326.97	
Invoice No. 0074 (Exhibit KK-10)	**5,274,976.19**	**257,672,036.93**
Remittance per Exhibit KK-37	**6,381,303.16**	
Exhibit KK-31		
Invoice No. 0068 (Exhibit KK-16)	16,874,088.88	
90% Remittance (Exhibit KK-44)	(15,186,679.99)	
Credit Memo	(24,003.73)	
Net	1,663,405.16	
Invoice No. 0078 (Exhibit KK-7)	**7,484,552.61**	**355,942,868.47**
Remittance per Exhibit KK-31	**9,147,957.77**	
Exhibit KK-28		
Invoice No. 0070 (Exhibit KK-14)	15,395,622.54	
90% Remittance (Exhibit KK-42)	(13,856,060.29)	
Credit Memo	(15,236.78)	
Net	1,524,325.47	
Invoice No. 0080 (Exhibit KK-4)	**2,829,898.44**	**132,974,097.79**
Total	4,354,223.91	

Invoice No. 0072 (Exhibit KK-12)	18,173,963.09	
90% Remittance (Exhibit KK-40)	(16,356,566.78)	
Credit Memo	(11,050.33)	
Net	1,806,345.98	
Invoice No. 0081 (Exhibit KK-5)	**1,760,152.98**	**82,712,104.37**
Total	3,566,498.96	
Remittance per Exhibit KK-28	**3,566,498.96**	
Overall Total		**1,464,242,064.84**

Guided with the above summary, this Court was able to trace and ascertain actual remittances of the foreign currency proceeds, of the invoices with Philippine peso equivalent of ₱1,464,242,064.84, that should have been included in the computation of petitioner's zero-rated sales. This brings petitioner's valid zero-rated sales to the amount of ₱10,667,821,281.20.[6]

As held in the assailed Decision, however, petitioner should have declared the export sales of ₱766,504,350.75, in its Quarterly VAT Returns for the second and fourth quarters of 2009, pursuant to Section 114(A)[7] of the 1997 NIRC, as amended. The said amount represents the discrepancy between petitioner's 2009 zero-rated sales in its audited financial statements amounting to ₱11,158,926,128.31, and the ₱10,392,421,777.56 zero-rated sales declared in petitioner's Quarterly VAT Returns for the same year. Hence, petitioner's input VAT claim corresponding to the undeclared zero-rated sales of ₱766,504,350.75 shall be denied.

On the other hand, petitioner asserts that the ₱766,504,350.75 difference were mere adjustments in prices not yet covered by VAT invoices to approximate the possible change in the price of products already sold. But once the final amount is determined, the adjustments shall then be covered by the appropriate sales invoices.

This Court cannot subscribe to petitioner's allegation that the above difference was not yet covered by VAT invoices for as indicated in the

[6] the sum of ₱9,203,579,216.42 (export sales previously granted zero-rating by this Court) and ₱1,464,242,064.84.
[7] "**SEC. 114. Return and Payment of Value-Added Tax. -**
(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis. *xxx*".

summary of zero-rated VAT invoices in the Independent Certified Public Accountant (ICPA) report, the total equivalent amount of petitioner's invoices in Philippine Peso is ₱11,133,615,475.17[8], which when compared with ₱11,158,926,128.31, reveals a discrepancy of only ₱25,310,653.14.

Petitioner also points out that the subsequent remittances for Sales Invoice Nos. 0075, 0076, 0079 and 0082, were separately indicated in the ICPA report. As these amounts were not included in the amounts considered by this Court, the same should allegedly be included to account for the amounts of the remittances.

This Court finds petitioner's argument without merit.

Per the ICPA's summary of invoices, the following amounts were indicated for Sales Invoice Nos. 0082, 0079, 0076 and 0075,[9] as shown below:

Invoice No.	Amount per Invoice (in US$)	Equivalent Amount of Invoice in PhP (per General Ledger balances)	Amount per Advice of Incoming Foreign Remittance (in US$)	Equivalent Amount of Remittance in PhP (per General Ledger balances)
0082	21,671,562.32	1,008,442,809.44	19,504,406.09	907,598,528.50
				99,970,916.98
				(remitted 04/26/10)
0079	22,568,844.89	1,063,714,797.36	20,311,960.40	957,343,317.63
				104,110,081.48
				(remitted 04/26/10)
0076	28,484,945.73	1,342,068,218.07	25,636,451.16	1,207,861,396.26
				131,443,782.08
				(remitted 03/15/10)
0075	32,509,557.07	1,540,725,438.22	29,258,601.36	1,386,652,894.40
				151,527,045.51
				(remitted 02/22/10)

The US dollar remittances of \$19,504,406.09, \$20,311,960.40, \$25,636,451.16 and \$29,258,601.36, representing 90% of the billed amounts

[8] Decision, p. 18.
[9] Exhibit "HH-15".

per Sales Invoices No. 0082, 0079, 0076 and 0075, were already considered by this Court in the assailed Decision.[10]

With regard to the 10% balance representing the invoice amounts, with Philippine peso equivalent of ₱99,970,916.98, ₱104,110,081.48, ₱131,443,782.08 and ₱151,527,045.51, the same cannot be considered by this Court. While these amounts were indicated to have been remitted on April 26, 2010, March 15, 2010 and February 22, 2010, the US dollar remittances reflected in the bank credit advices issued by Bank of Tokyo-Mitsubishi UFJ, Manila Branch on April 26, 2010,[11] March 15, 2010,[12] and February 22, 2010[13], in the amounts of US$10,239,525.79, US$4,227,045.59 and US$351,830.74, respectively, or in the aggregate sum of US$14,818,402.12, do not tally with the balances for Sales Invoice Nos. 0082, 0079, 0076 and 0075, in the respective amounts of US$2,167,156.23, US$2,256,884.49, US$2,848,494.57 and US$3,250,955.71 or in the total amount of US$10,523,491.00, as shown below:

Invoice No.	**Amount per Invoice (in US$)**	**Amount per Advice of Incoming Foreign Remittance (in US$) [90% of invoiced amt]**	**Unremitted Balance per Invoice (in US$) [10% of invoiced amt]**	**Amount per Advice of Incoming Foreign Remittance (in US$)**	**Exhibit**	**Date of Remittance**
0082	21,671,562.32	19,504,406.09	2,167,156.23			
0079	22,568,844.89	20,311,960.40	2,256,884.49			
Subtotal			**4,424,040.72**	**10,239,525.79**	**KK-29**	**4/26/2010**
0076	28,484,945.73	25,636,451.16	**2,848,494.57**	**4,227,045.59**	**KK-33**	**3/15/2010**
0075	32,509,557.07	29,258,601.36	**3,250,955.71**	**351,830.74**	**KK-36**	**2/22/2010**
Total	105,234,910.01	94,711,419.01	**10,523,491.00**	**14,818,402.12**		

As gleaned above, this Court cannot consider the 10% balance of Invoice Nos. 0082, 0079, 0076 and 0075, with the Philippine peso equivalent of ₱99,970,916.98, ₱104,110,081.48, ₱131,443,782.08 and ₱151,527,045.51, since it cannot be determined with certainty whether the remittances on April 26, 2010, March 15, 2010 and February 22, 2010, actually pertain to the balances of said invoices.

[10] Decision, p. 18.
[11] Exhibit "KK-29".
[12] Exhibit "KK-33".
[13] Exhibit "KK-36".

All told, petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate, representing unutilized excess input VAT for the four quarters of 2009, attributable to its zero-rated sales for the same period in the recomputed amount of ₱14,561,726.17, *viz.*:

Valid Input VAT			₱15,635,742.09
Less:	Disallowance		
	Input VAT attributable to the export sales undeclared per VAT returns		
	Undeclared export sales	₱ 766,504,350.75	
	Divided by total export sales per audited financial statements	÷ 11,158,926,128.31	
	Multiplied by valid input VAT	× 15,635,742.09	1,074,015.92
Input VAT attributable to the declared valid zero-rated sales			**₱14,561,726.17**

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration is **PARTIALLY GRANTED**, while respondent's Motion for Partial Reconsideration is **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on September 12, 2013 is **MODIFIED**. Respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱14,561,726.17**, representing petitioner's unutilized excess input Value Added Tax attributable to its zero-rated sales for taxable year 2009.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

(On Wellness Leave)
CIELITO N. MINDARO-GRULLA
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