REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILEX MINING CORPORATION, Petitioner,	**C.T.A CASE NO. 6828**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 16 2009 1:40pm

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AMENDED DECISION

BAUTISTA, *J.*:

For this Court's resolution is petitioner's **"Motion for Reconsideration/New Trial"** filed on May 22, 2008, seeking the reconsideration and setting aside of this Court's Decision dated April 25, 2008, which denied the Petition for Review; or in the alternative, the granting of a new trial to afford petitioner the opportunity to adduce in evidence the provisional invoices attached to the Motion.

Petitioner seeks the reconsideration of the *Decision* by enumerating a lengthy assignment of errors, which are quoted as follows:

"I

THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S DIRECT EXPORT SALES OF GOLD TO ENGLAND ARE NOT ZERO-RATED BECAUSE THE SALES INVOICES THAT COVERED THE SALES WERE NOT REGISTERED WITH THE BIR, AND THE WORD 'VAT' WAS NOT PRINTED AFTER PETITIONER'S TIN NUMBER, SUPPOSEDLY IN VIOLATION OF SECTIONS 113, 237 AND 238 OF THE TAX CODE, AND SECTION 4.108-1 OF REVENUE REGULATIONS (RR) NO. 7-95.

II

THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S DIRECT EXPORT SALES OF COPPER CONCENTRATES TO JAPAN DO NOT QUALIFY FOR VAT ZERO-RATING BECAUSE THE SALES INVOICES THAT COVERED THE SAME PERTAIN TO THE FIRST QUARTER OF 2002 AND FALL OUTSIDE THE PERIOD OF THE CLAIM IN THE PETITION. THE FACT IS THAT SAID SALES INVOICES PERTAIN TO THE 4TH QUARTER OF 2001, THE PERIOD OF THE CLAIM.

III

THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S INDIRECT EXPORT SALES TO PASAR ALSO DO NOT QUALIFY FOR VAT ZERO-RATING BECAUSE THE SALES INVOICES THAT COVERED THE SALES FALL OUTSIDE THE PERIOD OF THE CLAIM IN THE PETITION. THE FACT IS THAT SAID SALE INVOICES ALSO PERTAIN TO THE PERIOD OF THE CLAIM."

In a Resolution promulgated on September 8, 2008, this Court found the first assigned error unmeritorious but granted the prayer for new trial and allowed petitioner to present to the Court the originals of the documents attached to its Motion as annexes for evaluation and consideration. Consequently, the resolution of the second and third assigned errors was held in abeyance.

This case was then set for a Commissioner's hearing for the marking of petitioner's additional documentary evidence. Petitioner presented Exhibits "T" to "Y-1", which are either originals or faithful reproductions of the original documents.

Petitioner submitted its Supplemental Formal Offer of Evidence on November 5, 2008, *sans* respondent's comment. Hence, this Amended Decision.

Inasmuch as the first assigned error was already found by this Court as untenable in the Resolution dated September 8, 2008, only the afore-quoted second and third grounds will be resolved.

Petitioner alleges that its export sales of copper concentrates fall within the fourth quarter of 2001. Petitioner explains that there are two periods when pricing or valuation of a shipment is made. *First*, a **provisional pricing or valuation** which is made upon shipment based on weight (dry and wet weight) and moisture as determined by petitioner and also based on petitioner's provisional assays showing copper, gold, and silver content. *Second*, a **final concentrate value** is made at upon arrival of the concentrates at the port of unloading, where the weight and the moisture content are determined.

Furthermore, petitioner points out that the considered date of the sale transaction is at the time of the delivery of the shipment to the carrier. And based on the sales contract of petitioner with its buyer,[1] it requires a provisional payment from the latter to petitioner of ninety percent (90%) of the estimated value of a shipment and a final payment based on final settlement of weights, assays, and quotations. This is purportedly the reason why petitioner issues a provisional invoice for the 90% estimated value of a shipment and a final invoice for the payment of the final balance after final settlement of the weight, assays, and quotations are completed. This also allegedly explains why the final invoices carry dates much later than the date when the sale or shipment was actually made.

To support its motion, petitioner presented and formally offered in evidence the Provisional Invoices[2] it issued to Nippon Mining and Metals Co. Ltd. of Tokyo, Japan for the fourth quarter of 2001.

With the newly submitted evidence, it reveals that petitioner's final sales invoices[3], supporting its export sales of copper concentrates to Nippon, Japan in the amount of US$6,079,655.09, are valid and that the said sales with peso equivalent of P315,016,110.15 qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997. The amount of P315,016,110.15 is computed below:

Declared Zero-Rated Sales in Peso[4]	732,929,200.74
Divided by Declared Zero-Rated Sales in US$[5]	÷ 14,145,171.00
Average peso to dollar rate	51.8147996047
Multiplied by Substantiated Zero-Rated Sales in US$	x 6,079,655.09
Substantiated Zero-Rated Sales in Peso	**P315,016,110.15**

[1] Exhibit "K"
[2] Exhibits "U" and "V"
[3] Exhibits "O-1" and "O-2"
[4] Exhibit "C-3"
[5] Exhibit "S-2", page 2

As regards petitioner's indirect export sales to Philippine Associated Smelting and Refining Corporation (PASAR) in the amount of US$6,281,929.00, the corresponding Provisional Invoices[6] showed that petitioner actually made indirect exports to PASAR in the amount of US$6,281,929.00 for the subject period of claim.[7] Such indirect export sales with peso equivalent of P325,496,892.27 are subject to zero percent (0%) VAT, pursuant to Section 106(A)(2)(a)(5) in relation to Articles 23 and 77(2) of the Omnibus Investments Code and Revenue Memorandum Circular (RMC) No. 74-99. The amount of P325,496,892.27 is computed as follows:

Declared Zero-Rated Sales in Peso[8]	732,929,200.74
Divided by Declared Zero-Rated Sales in US$[9]	÷ 14,145,171.00
Average peso to dollar rate	51.8147996047
Multiplied by Substantiated Zero-Rated Sales in US$	x 6,281,929.00
Substantiated Zero-Rated Sales in Peso	**P325,496,892.27**

Nevertheless, as to the catch up adjustments to petitioner's prior quarter's shipments amounting to US$126,308.00, the same shall be denied VAT zero-rating for petitioner's failure to present supporting documents.

To recapitulate, out of the reported zero-rated sales of US$14,145,171.00 for the fourth quarter of 2001, only the following export sales in the total amount of US$12,361,584.09, with peso equivalent of P640,513,002.42, qualify for VAT zero-rating:

	In US Dollars	In Phil Peso
Direct Exports of Copper to Japan	6,079,655.09	315,016,110.15
Indirect Exports of Copper to PASAR	6,281,929.00	325,496,892.27
Total	**12,361,584.09**	**640,513,002.42**

The Court now proceeds to determine whether petitioner's input taxes in connection with its zero-rated sales for the fourth quarter of 2001 are duly substantiated.

In its VAT Return for the fourth quarter of 2001[10], petitioner reflected an input VAT of P245,873.07 on domestic purchases and an input VAT of P10,446,372.00 on importations or a total amount of P10,692,245.07, as shown below:

[6] Exhibits "W" and "X"
[7] Exhibits "O-6", "W", "O-7", and "X"
[8] Exhibit "C-3"
[9] Exhibit "S-2", page 2

	Purchases	Input Tax
Domestic Purchases - Goods other than Capital Goods	P 2,458,730.70	P 245,873.07
Importations - Goods other than Capital Goods	104,463,720.00	10,446,372.00
TOTAL	P 106,922,450.70	P10,692,245.07

In order to determine the accuracy of petitioner's declaration, the Court commissioned an Independent Certified Public Accountant (ICPA) to examine the voluminous documents that petitioner submitted in support of its claim for refund.

With regard to the input taxes on domestic purchases, the ICPA, in his Report dated July 20, 2006, made the following findings on petitioner's input VAT on domestic purchases for the third quarter of 2002:

	Particulars	Amount
A	Original VAT official receipts that are in the name of petitioner	
	a.1 Receipts dated in the current quarter	P 55,840.58
	a.2 Out of period receipts dated 1st quarter of 2002	4,513.88
	a.3 Undated receipts	3,710.17
B	VAT official receipts that are not in the name of petitioner	7,676.88
C	Non-VAT receipts	40,828.51
D	Receipts that are photocopies or no receipts were presented	83,673.84
E	Invoices that are photocopies or no invoices were presented	73,727.16
F	Negative input VAT	(24,097.95)
	TOTAL	**P 245,873.07**

Based on the above findings, only the input VAT of P55,840.58 *(item a.1)* represents petitioner's valid claim, while the remaining amount of P190,032.49 *(items a.2, 2.3, b, c, d, e and f)* shall be denied for the above-stated reasons.

Anent the input VAT payment of P10,446,372.00 on petitioner's importations, the ICPA reported the following findings:

Particulars	Exhibit	Amount
SUPPORTED BY BCOR[11]		
BCOR are original copies		
a. Out of period BCOR dated:		
a.1 4th quarter of 2000	Q1-Q7	P 354,046.00
a.2 1st quarter 2001	Q8-Q18	1,133,075.00
a3 2nd quarter 2001	Q19-Q35	1,729,385.00

[10] Exhibit "C-3"
[11] Bureau of Customs official receipts

a.4 3rd quarter 2001	Q36-Q55	2,598,610.00
		P 5,815,116.00
b. BCOR dated in the current quarter	Q-56-Q62	1,002,562.00
c. BCOR are photocopies		1,046,927.00
Supported by BDA[12] and IEIRD[13]		
d. Out of period BDA dated 3rd quarter of 2001	Q63-Q64	111,828.00
e. BDA dated in the current quarter	Q65-Q89	1,976,748.00
f. BDA not supported by IEIRD		493,191.00
TOTAL		**P10,446,372.00**

The Court finds that only the amount of P1,002,562.00 *(item b)* is a valid claim considering that it was directly paid to the Bureau of Customs and is duly covered by official receipts, to wit:

Items Imported	Exhibit No.	Input VAT
Reagent Frother	Q56	P 36,447.00
Reagent Frother	Q57	79,323.00
Spare Parts for Crusher	Q58	206,096.00
Reagent Frother	Q59	131,057.00
Sodium Isobutyl Xanthate	Q60	145,594.00
Ventilation Equipment	Q61	159,056.00
Linatex Rubber Sheet	Q62	244,989.00
TOTAL		**P1,002,562.00**

The input taxes of **P5,815,116.00** *(items a.1, a.2, a.3 and a.4)* on importations which are supported by Bureau of Customs official receipts were dated outside the period of claim; therefore, shall be disallowed. This is consistent with the ruling of the Court that input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be claimed for refund.

Also the input taxes of **P1,046,927.00** *(item c)* on purchases of goods which are allegedly supported by photocopied BCORs shall be disallowed, for the reason that the photocopied invoices cannot be given evidentiary value in violation of the Best Evidence Rule.

[12] Bank Debit Advices
[13] Import Entry and Internal Revenue Declaration

Likewise, the amount of **P2,088,576.00** *(items d and e)* which are supported by Import Entry and Internal Revenue Declarations[14] shall be disallowed for petitioner's failure to present the originals of the same.[15] Similarly, the Bank Debit Advices[16] are inadmissible as evidence, since these do not indicate the actual input VAT payments. Moreover, no official receipts or other documents proving actual payment of VAT on the imported goods were presented to support such claim.

Petitioner must prove the actual payment of VAT on the imported goods by submitting the documents specified in Section 4.104-5(b) of Revenue Regulations No. 7-95, which is an IEIRD, duly validated for actual payment of the input tax or in its absence, other equivalent document. Thus, without these documents, petitioner's claimed input VAT payment in the amount of P2,088,576.00 cannot be granted.

In addition, the input taxes of **P493,191.00** shall be disallowed for petitioner's failure to present before this Court any supporting documents to prove the same.

To recapitulate, only the amount of P1,058,402.58 is duly substantiated by valid supporting documents, detailed as follows:

Substantiated Input tax on domestic purchases	P 55,840.58
Substantiated Input tax on importations	1,002,562.00
Total Substantiated Input Tax	**P 1,058,402.58**

However, a portion of the substantiated input VAT of P1,058,402.58 shall be applied against petitioner's reported output VAT liability of P826,145.46.[17] Hence, only the remaining input VAT of P232,257.12 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P732,929,200.74 and only the input VAT of P202,971.45 is attributable to the substantiated zero-rated sales of P640,513,002.42, as computed below:

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[14] Exhibits "Q63a" to "Q89a"
[15] Resolution dated March 21, 2007, *Rollo*, p. 213
[16] Exhibits "Q63" to "Q89"
[17] Exhibit "C-3"

Substantiated Input Tax	P	1,058,402.58
Less: Output Tax Due		826,145.46
Excess Input Tax	**P**	**232,257.12**
Substantiated Zero-Rated Sales	P	640,513,002.42
Divided by Total Declared Zero-Rated Sales	÷	732,929,200.74
Multiplied by Excess Input Tax	x	232,257.12
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	**P**	202,971.45

As evidenced by its Quarterly VAT Returns[18] from the first quarter of 2002 to the fourth quarter of 2002, petitioner was able to prove that the input VAT of P202,971.45 was not applied against any output VAT in the succeeding quarters.

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period both in the administrative and judicial levels. In the recent case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)**[19], 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 the input VAT, regardless of whether said tax was paid or not. The present claim pertains to input VAT incurred for the fourth quarter of 2001. Counting from December 31, 2001, the end of the fourth quarter of 2001, petitioner had until December 31, 2003 to file its claim both in the administrative and judicial levels. Thus, the administrative claim filed on October 8, 2003[20] and the Petition for Review filed on December 3, 2003 fall within the two-year prescriptive period.

WHEREFORE, premises considered, petitioner's **"Motion for Reconsideration/New Trial"** is hereby **PARTIALLY GRANTED** and this Court's Decision dated April 25, 2008 denying petitioner's Petition for Review is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **TWO HUNDRED TWO THOUSAND NINE HUNDRED SEVENTY ONE AND**

[18] Exhibits "F", "G", "H" and "I"
[19] G.R. No. 172129, September 12, 2008
[20] Annexes "D" and "D-1", Petition for Review

45/100 PESOS (P202,971.45), representing petitioner's excess input taxes on importations and domestic purchases attributable to zero-rated sales for the fourth quarter of taxable year 2001.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division