REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1168** (CTA Case No. 8371)
	Present:
- versus -	Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.
PHILEX MINING CORPORATION, Respondent.	Promulgated: SEP 09 2015 2:37 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

Before Us is petitioner's **Motion for Reconsideration (Decision of 19 June 2015)** filed on July 13, 2015, with respondent's **Opposition/Comment (Motion for Reconsideration) (Decision of June 19, 2015)**, filed on July 30, 2015.

The dispositive portion of the assailed Decision[1] reads:

> "**WHEREFORE**, premises considered, the above-captioned Petition for Review is hereby **DENIED** for lack of

[1] Court En Banc Docket, pp. 135-148.

merit. Accordingly, the Decision dated November 12, 2013 and the Amended Decision dated April 15, 2014 are hereby **AFFIRMED**.

SO ORDERED."

After filing of petitioner's motion for reconsideration with respondent's opposition/comment, the subject motion is now deemed submitted for resolution.

In the subject motion, petitioner avers that respondent's filing of judicial claim is premature because the 120-day period for the processing of the claim was suspended pending respondent's submission of complete documents. Moreover, respondent's failure to comply with the invoicing and accounting requirements, i.e., maintenance of subsidiary sales journal, subsidiary purchase journal and monthly VAT declarations, justifies the denial of the claim for refund.

On the other hand, respondent contends that the arguments raised by petitioner in the instant motion were already passed upon by the Court in Division and by this Court *en banc*. At any rate, respondent argues that the Court has consistently ruled that non-submission of complete documents in the administrative level is not fatal to a taxpayer's claim for refund. Furthermore, respondent alleges that it submitted its supporting documents to petitioner. However, petitioner failed to transmit the same to the Court. Likewise, respondent asserts that failure to comply with the invoicing and accounting requirements is not fatal to its claim.

The issues to be resolved in this case are: (1) Whether or not respondent's alleged non-submission of complete documents warrants the denial of its claim for refund; (2) Whether or not the 120-day period of petitioner to decide on respondent's claim for refund was suspended; and (3) Whether or not respondent's failure to comply with the invoicing and accounting requirements, i.e., maintenance of subsidiary sales journal, subsidiary purchase journal and monthly VAT declarations, is fatal to its claim.

We deny petitioner's motion.

Prefatorily, a perusal of the instant motion reveals that petitioner merely rehashed her arguments in the Petition, which arguments had already been discussed in the assailed Decision and the Decision *a quo*.

Non-submission of complete documents in the administrative level is not fatal to respondent's claim for refund; the 120-day period of the petitioner to act on the claim was not suspended

On this score, the Court *en banc* held that:

> "The definition of the phrase "relevant supporting documents" is already well-settled. In the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, the Supreme Court ruled that *relevant supporting documents* are those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.
>
> While the present case does not involve tax assessment, we agree with respondent that the BIR cannot determine what type of document respondent needs to produce in order to prove its claim for tax refund. In other words, respondent has the liberality to present any evidence which, to its mind, would be sufficient to prove entitlement to its claim for refund."[2] *(Citations omitted)*

In the recent case of *Commissioner of Internal Revenue v. Philex Mining Corporation*[3] which involved the same parties, petitioner questioned respondent's non-submission of complete documents in the administrative level. Ruling in favor of respondent, the Court *en banc* held that:

> "xxx this Court has consistently upheld the longstanding rule that in claims for VAT refund, the alleged non-submission of complete supporting documents in the administrative level is not fatal to petitioner's judicial claim. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to

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[2] Court *en banc* Docket, p. 144.
[3] CTA EB No. 1138, July 29, 2015, penned by Associate Justice Amelia R. Cotangco-Manalastas.

> warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court."[4]

Under the above-quoted ruling of this Court, non-submission of complete documents in the administrative level is not fatal to respondent's judicial claim, because the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.

Applying the ruling of the Court *en banc* in the said case and in the assailed Decision, We find no merit to petitioner's argument that respondent's alleged non-submission of complete documents in the administrative level warrants the denial of its claim for refund.

Likewise, We find no merit to petitioner's arguments that respondent's alleged non-submission of complete documents suspends the running of the 120-day period under Section 112(C) of the National Internal Revenue Code of 1997, as amended. As correctly found by the Court in Division:

> "Significantly, there is nothing in the record that shows that respondent required and petitioner failed to submit additional documents to support its claim for refund/tax credit. This simply means that the 120-day period started and continued to run from June 15, 2011 in consonance with Revenue Memorandum Circular No. 029-09 which reads as follows:
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> xxx xxx xxx
>
> **In cases where taxpayer failed to comply with the above conditions/requirements**, *i.e.*, failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer**. xxx"[5]

Pursuant to Revenue Memorandum Circular No. 029-09, the running of the 120-day period shall stop from the date of notification to the taxpayer. In the instant case, however, no such notification was given by petitioner to

[4] Id., citing *Commissioner of Internal Revenue us. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 474, September 1, 2009; *Commissioner of Internal Revenue us. ToledoPower Company*, CTA EB Case No. 589, September 15, 2010; *Commissioner of InternalRevenue us. Philippine Airlines, Inc.*, CTA EB Case No. 775, November 13, 2012.
[5] Division Docket, pp. 179-180.

respondent to prove that the 120-day period was tolled. In other words, petitioner failed to present evidence that the 120-day period was indeed, suspended. Thus, We find the foregoing argument unmeritorious.

Failure to maintain subsidiary sales journal, subsidiary purchase journal and monthly VAT declarations does not warrant the denial of respondent's claim for refund

In this regard, this Court held that:

> "While it is conceded that the mandatory requirements set forth under Section 113 (C) and Section 114 (A) of the NIRC of 1997, as amended, should be complied with, it is equally important to consider the doctrine laid down under the *First Express Pawnshop Company, Inc.* case that it is the taxpayer who has the leeway to determine what type of relevant supporting documents it shall present for the successful prosecution of its claim.
>
> As aptly found by the Court in Division, respondent was able to prove by its relevant supporting documents that it is entitled to its claim for refund. Whether respondent maintains a subsidiary sales journal and subsidiary purchase journal does not affect respondent's claim for refund, because it is not one of the requisites for respondent to be entitled thereto. xxx"[6]

Similarly, in the above-mentioned *Philex* case, the issue whether respondent's failure to submit subsidiary sales journal, subsidiary purchase journal and monthly VAT declarations is fatal to its claim for refund, was raised. Ruling in favor of respondent, the Court *en banc* held in this wise:

> "The requirements for refund or tax credit certificate of input tax attributable to zero-rated or effectively zero-rated sales are delineated in Section 112 (A) of the 1997 NIRC, as amended. As consistently held by the Court *En Banc,* **there is nothing in the afore-mentioned provision of the 1997 NIRC, as amended, which requires the presentation of the subsidiary sales journal, subsidiary purchase journal, and monthly VAT declarations in order that a taxpayer may be entitled to refund or issuance of tax credit certificate of its**

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[6] Court *en banc* Docket, p. 147.

> **claimed input tax attributable to zero-rated sales.** xxx" *(Emphasis supplied)*

Thus, the submission of subsidiary sales journal, subsidiary purchase journal and monthly VAT declarations is not one of the requisites for respondent to validly claim for refund of erroneously or excessively paid taxes. In addition, and consistent with the Supreme Court's ruling in the *First Express Pawnshop Company, Inc.* case[7] cited in the assailed Decision, it is the taxpayer who has the liberty to present evidence in relation to the requirements of Section 112 (A) of the NIRC of 1997, as amended, for the successful prosecution of its claim.

To conclude, We find no cogent reason to reconsider Our Decision dated June 19, 2015 based on petitioner's rehashed arguments.

WHEREFORE, in view thereof, petitioner's Motion for Reconsideration (Decision of 19 June 2015) is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[7] G.R. No. 172045-46, June 16, 2009 (589 SCRA 275).

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice