REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7587

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
DEC 0 8 2009
4:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This case seeks the refund of the amount of **NINE MILLION FOUR HUNDRED THREE THOUSAND FOUR HUNDRED SEVENTEEN PESOS AND 40/100 (P9,403,417.40)**, allegedly representing petitioner Philex Mining Corporation's excess input value-added tax (VAT) incurred in relation to its zero-rated sales of mineral products for the first quarter of taxable year 2005.

Philex Mining Corporation (petitioner) is a corporation organized under Philippine laws with principal office at 27 Brixton St., Pasig City. It is engaged in the mining business, which includes the exploration and operation of mine properties and the commercial production and marketing of mine products. Petitioner is a VAT-registered taxpayer, with VAT Registration Certificate No.

35-6-000731 effective October 29, 1997, and under BIR Form No. 2303 as of January 31, 1997. It also has a duly approved Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95.[1]

On the other hand, the Commissioner of Internal Revenue (respondent) is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the National Internal Revenue Code (NIRC). He holds office at the Bureau of Internal Revenue (BIR) National Office, Diliman, Quezon City.

Petitioner filed its original VAT Return for the first quarter of 2005 on April 22, 2005, which reflected total zero-rated sales of P1,231,960,154.60; domestic purchases of goods of P1,299,744.00, with input tax of P129,977.40; and importation of goods in the amount of P92,734,400.00, with input tax of P9,273,440.00.[2]

On March 6, 2006, petitioner filed its claim for refund of the amount of P9,403,417.40 with the One Stop Shop Center of the Department of Finance, per application No. 52741.[3]

Respondent has not taken any action on petitioner's administrative claim for refund; hence, petitioner filed its judicial claim with this Court on March 30, 2007.

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[1] Pars. 1 and 2, Stipulation of Facts and Issues, docket, p. 47.
[2] Par. 4, Stipulation of Facts and Issues, docket, pp. 47-48.
[3] Annex "C", Petition for Review.

In his Answer[4] filed on May 22, 2007, respondent raised the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
>
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 8. The grant of claim for refund (is) tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 9. The taxes sought to be refunded were paid in accordance with law, the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

After presentation of its evidence, petitioner filed its Formal Offer of Evidence[5] on August 13, 2008, which was resolved in a Resolution[6] dated October 6, 2008.

On December 8, 2008, counsel for respondent manifested that he is submitting the case for decision based on the pleadings.[7] Consequently, in a Resolution[8] dated December 8, 2008, the parties were ordered to submit their respective Memorandum.

Memorandum for the Petitioner[9] was filed on January 9, 2009. In a Resolution[10] dated February 6, 2009, the case was submitted for decision, sans respondent's Memorandum.

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[4] Docket, pp. 24-26.
[5] Docket, pp. 167-169.
[6] Docket, pp. 179-180.
[7] Docket, p. 184.
[8] Docket, p. 186.
[9] Docket, pp. 187-214.
[10] Docket, p. 216.

The parties submitted the following issues[11] for this Court's resolution:

> "1. Whether or not Petitioner's importation of capital goods, and domestic purchases and importations of goods which are attributable to its export sales for the 1st quarter of 2005, are duly supported by documentary evidence.
>
> 2. Whether Petitioner made direct and indirect exports of mineral products during the same period that are zero-rated.
>
> 3. Whether or not the accumulated or excess input VAT was not utilized or applied by Petitioner against output VAT in the 1st quarter of 2005 or in the succeeding quarters or taxable years.
>
> 4. Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.
>
> 5. Whether or not Petitioner is entitled to the refund of the excess input taxes in the total amount of Php9,403,417.40 for the 1st quarter of 2005 paid for the purchase of capital goods and/or non-capital goods and services due to Petitioner being a producer and exporter of mineral products."

The above-enumerated issues can be summarized into a single issue, to wit:

"Whether or not petitioner is entitled to a refund of the alleged excess input VAT in the amount of P9,403,417.40 incurred in relation to zero-rated sales of mineral products for the first quarter of taxable year 2005."

Section 112(A) of the NIRC of 1997 lays down the requisites for claims for issuance of tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads as follows: *gl*

[11] Statement of the Issues, Stipulation of Facts and Issues, docket, p. 49.

> "**SEC. 112. Refunds or Tax Credits of Input Tax. -**
>
> **(A) Zero-rated or Effectively Zero-rated Sales. -** Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 B(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

From the foregoing, petitioner must comply with the following requisites to be entitled to a refund:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

As to the first requisite, Mr. Albert G. Alba, the Court-commissioned Independent Certified Public Accountant (CPA) noted that petitioner's zero-rated export sales amounting to US$22,538,949.00, with peso equivalent of P1,231,960,154.00, as reported in petitioner's Quarterly VAT Return for the first quarter of 2005[12], consisted of the following: *gr*

[12] Exhibit "J-13".

Particulars	Amount
Current Quarter's Shipments:	
Direct exports of copper to Japan	US$ 18,053,815.00
Indirect exports of copper to PASAR	4,845,276.00
Total	US$ 22,899,091.00
Previous Quarters' Shipments	
Adjustment to correct previous billings	(360,142.00)
Total	**US$ 22,538,949.00**

Petitioner claims that its shipments and sales of copper concentrates to Pan Pacific Copper Co., Ltd. of Tokyo, Japan are VAT zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "**SEC. 106. Value-added Tax on Sale of Goods or Properties. -**
>
> **(A) Rate and Base of Tax. -** xxx
>
> xxx xxx 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)."

Thus, in order for an export sale to qualify as VAT zero-rated, the following conditions must be present:

1. there was sale and actual shipment of goods from the Philippines to a foreign country;
2. the sale was made by a VAT-registered person;
3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. the payment was accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

Petitioner complied with all of the above requisites. The fact that petitioner is a VAT-registered entity is not disputed.[13] For the period of January 1, 2005 to March 31, 2005, petitioner actually shipped its mineral products abroad to a foreign buyer, particularly, Pan Pacific Copper Co., Ltd. of Tokyo, Japan; and generated export sales in the amount of US$18,053,815.00, as shown in petitioner's Schedule of Direct Export Sales[14] and various export documents, such as provisional invoices[15], final sales invoices[16], export declarations[17], and bills of lading[18].

While the final invoices submitted by petitioner bear dates much later than the dates of shipment indicated in the bills of lading and provisional invoices, petitioner explained that in its direct exports of copper concentrates, it issues two invoices to the buyer. The first, which petitioner issues upon shipment, is the **Provisional Invoice** covering ninety percent (90%) of the estimated value of the shipment, and the second is the **Final Invoice** which petitioner issues only after petitioner and its buyer have reached an agreement regarding the final settlement weights, assays, and quotations or final value of the shipment; which are determined or done after arrival of the shipment at the port of loading. This is stated under Clause 9 of petitioner's Long Term Gold and Copper Concentrates Sales Agreement with Pan Pacific Copper Co., Ltd. of Japan.[19] In other words, the considered date of the sale transaction is the shipment date indicated in the bill of lading. Inasmuch as

[13] Par. 2, Stipulation of Facts and Issues, docket, p. 47.
[14] Exhibit "F".
[15] Exhibits "F-1" to "F-3".
[16] Exhibits "F-1-a" to "F-3-a".
[17] Exhibits "F-1-b" to "F-3-b".
[18] Exhibits "F-1-c" to "F-3-c".
[19] Exhibit "B".

the bills of lading covering the export sales of US18,053,815.00 are all dated within the first quarter of 2005, the related final invoices which carry dates much later than the dates when the sales or shipments were made, are deemed valid.

Likewise, the foreign currency proceeds of US$18,053,815.00, derived from said export sales, were inwardly remitted and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, as evidenced by the bank certifications issued by petitioner's banks[20] and entries in petitioner's passbooks in local banks of the payments received.[21]

With respect to petitioner's indirect export sales to Philippine Associated Smelting and Refining Corporation (PASAR), a PEZA-registered entity, in the amount of US$4,845,276.00, petitioner cites Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, which states:

> "**SEC. 106. Value-added Tax on Sale of Goods or Properties. –**
>
> **(A) Rate and Base of Tax.** - xxx
>
> xxx xxx 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:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws." ge

[20] Exhibits "G-1", "G-2", and "G-4".
[21] Exhibits "G-1-a" to "G-4-a".

Sales by a VAT taxpayer from the Customs Territory to a PEZA entity are considered export sales under Executive Order (E.O.) No. 226, otherwise known as "the Omnibus Investments Code of 1987", the relevant portions of which read as follows:

> "ARTICLE 23. 'Export Sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents: *Provided, further*, That without actual exportation the following shall be considered 'constructively exported' for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones**; xxx" (*Emphasis supplied*)
>
> "ARTICLE 77. Tax Treatment of Merchandise in the Zone. — (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.
>
> (2) **Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction.** " (*Emphasis supplied*)

Further, in Revenue Memorandum Circular (RMC) No. 74-99, the BIR stated, thus: Jz

> "**SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise. -**
>
> xxx xxx xxx
>
> 3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. **Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to Art. 77(2) of the Omnibus Investments Code**, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.
>
> This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular."

In the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[22], the Supreme Court made the following explanation:

> "Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales. Zero-rating of export sales primarily intends to benefit the exporter (*i.e.*, the supplier from the Customs Territory), who is

[22] G.R. No. 150154, August 9, 2005.

> directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales."

Clearly, from the provision of Section 106(A)(2)(a)(5), in relation to Articles 23 and 77(2) of the Omnibus Investments Code, and as clarified by the BIR in RMC No. 74-99 and the Supreme Court in the *Toshiba case*, indirect exports made by a VAT taxpayer, like herein petitioner, to a PEZA-registered entity are legally entitled to zero percent (0%) VAT.

In support of its indirect export sales to PASAR, petitioner submitted provisional invoices[23], final invoices[24] and bills of lading[25]. A perusal of these documents showed that the bill of lading[26] pertaining to the sales amount of US$1,612,179.00 falls outside the period of claim; hence, shall be denied. Consequently, out of the US$4,845,276.00 claimed zero-rated sales to PASAR, only the amount of US$3,233,097.00 is duly substantiated.

As to the adjustments to correct billings for previous quarter's shipments in the amount of P360,142.00, the Court finds the adjustments proper as shown by the provisional[27] and final invoices[28] submitted by petitioner.

To recapitulate, out of the reported zero-rated sales for the first quarter of 2005 in the amount of US$22,538,949.00 with peso equivalent of P1,231,960,154.60, the following export sales in the total amount of

[23] Exhibits "F-4" to "F-6".
[24] Exhibits "F-4-a" to "F-6-a".
[25] Exhibits "F-4-c" to "F-6-c".
[26] Exhibit "F-6-c".
[27] Exhibits "F-7" to "F-11".
[28] Exhibits "F-7-a" to "F-11-a".

US$20,926,770.00 with peso equivalent of P1,143,839,795.04, qualifies for VAT zero-rating:

	In US Dollars	In Phil Peso **
Direct Exports of Copper to Japan	18,053,815.00	986,806,470.81
Indirect Exports of Copper to PASAR	3,233,097.00	176,718,385.58
Adjustment to correct previous billings	(360,142.00)	(19,685,061.36)
Total	**20,926,770.00**	**1,143,839,795.04**
**		
Declared Zero-Rated Sales in Php (Exh. "J-13")	1,231,960,154.60	
Divided by Declared Zero-Rated Sales in US$ (Exh. "E")	22,538,949.00	
Average peso to dollar rate	**54.6591659886**	

The Court now proceeds to the determination of whether petitioner's input taxes in connection with its zero-rated sales for the first quarter of 2005 are duly substantiated.

Petitioner submitted its Summary of Input VAT on Importations[29] and Summary of Input Taxes on Domestic Purchases[30] for the first quarter of 2005 with the corresponding Bureau of Customs (BOC) official receipts or bank debit advices[31], BOC Import Entry and Internal Revenue Declarations (IEIRDs)[32], and suppliers' VAT invoices/official receipts[33], in support of the following input taxes reported in its Quarterly VAT Return for the first quarter of 2005[34]:

[29] Exhibit "H".
[30] Exhibit "I".
[31] Exhibits "H-1" to "H-38".
[32] Exhibits "H-1-a", "H-3-a", and "H-36-a".
[33] Exhibits "I-1" to "I-24".
[34] Exhibit "J-13".

	Purchases	Input Tax
Domestic Purchases - Capital Goods	P 1,299,774.00	P 129,977.40
Importations - Goods other than Capital Goods	92,734,400.00	9,273,440.00
Total	**P 94,034,174.00**	**P 9,403,417.40**

Upon examination of the supporting documents of petitioner, the Court-commissioned Independent CPA made the following findings:

Input taxes on domestic purchases		
a) Original VAT official receipts that are in the name of Petitioner		
1. Receipts dated in the current quarter	P 11,600.73	
2. Out-of-period receipts, dated 4th quarter of 2004	1,571.98	
3. Out-of-period receipts, dated 2nd quarter of 2005	2,171.65	
b) No supporting VAT official receipts/invoices presented	114,633.04	P 129,977.40
Input taxes paid on importation of:		
a) Capital Goods	P 5,430,778.00	
b) Other than capital goods	3,373,737.00	
c) Input tax payments with no supporting documents	468,925.00	9,273,440.00
Total Input tax – 1st Quarter 2005		**P 9,403,417.40**

Based on the above findings, the claimed input taxes on domestic purchases in the amounts of P1,571.98 (*item a.2)* and P2,171.65 *(item a.3)* totaling P3,743.63 which are covered by VAT official receipts dated outside the period of claim shall be disallowed.

In the case of *Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue*[35], this Court in a Resolution dated July 28, 2004, had the occasion to rule that the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser only *upon consummation of sale*, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the

[35] C.T.A. Case No. 6168, July 17, 2003.

purchaser only *upon payment of the compensation or fee, i.e.,* upon issuance by the seller of the VAT official receipt for the payment for services performed or yet to be performed. Section 110(A) of the NIRC of 1997 is clear that the input tax shall be allowed as tax credit to the purchaser only upon consummation of sale or upon payment of the compensation, as the case may be. Accordingly, it is imperative for petitioner to *declare the input VAT on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoices and where purchases of services were paid, as evidenced by VAT official receipts.*

Likewise, petitioner's claimed input taxes on domestic purchases and importations in the respective amounts of P114,633.04 and P468,925.00, or in the sum of P583,558.04, shall be denied for having no supporting documents.

Moreover, petitioner's input tax claim should be further reduced by P2,222,665.54 due to the following reasons:

Input VAT on Domestic Purchases					
1.	*Supported by ORs not in the name of petitioner*				
	Exhibit No.	**OR No.**	**Date**	**Input VAT**	**Total Input VAT**
	I-12	103376	2/11/2005	226.00	
	I-14	103379	2/18/2005	239.89	P 465.89
2.	*Supported by OR with incomplete date*				
	I-13	116	11-Feb	4,184.65	4,184.65
Input VAT on Importations					
1.	*Supported by Bank Debit Advices (BDAs) or BOC ORs which are dated outside the period of claim*				
	Exhibit No.	**BOC OR/ BDA No.**	**Date**	**Input VAT**	
	H-4	190351	10/8/2004	57,479.00	
	H-5	190028	11/26/2004	85,111.00	

	H-6	190029	10/21/2004	155,218.00	
	H-7	189813	10/4/2004	143,990.00	
	H-8	190353	10/20/2004	145,336.00	
	H-9	190350	11/23/2004	90,388.00	
	H-10	190285	10/28/2004	49,427.00	
	H-11	190356	10/21/2004	200,137.00	
	H-12	190355	10/21/2004	73,507.00	
	H-13	189864	10/18/2004	87,720.00	
	H-14	190485	11/10/2004	82,878.00	
	H-15	190709	11/24/2004	47,748.00	
	H-16	190529	11/17/2004	39,266.00	
	H-17	190716	11/23/2004	105,272.00	
	H-18	190710	11/24/2004	73,312.00	
	H-19	119402701	12/6/2004	34,148.00	
	H-20	190287	12/10/2004	29,135.00	
	H-21	190931	12/14/2004	19,828.00	
	H-22	119403015	12/15/2004	22,933.00	
	H-23	119402981	12/15/2004	57,294.00	
	H-24	119403042	12/16/2004	14,251.00	
	H-25	5805	12/20/2004	9,748.00	
	H-38	118855527	11/23/2004	4,949.00	1,629,075.00
2	*Claimed input taxes are not separately indicated or clearly reflected in the supporting BDAs*				
	H-2	7475	2/3/2005	130,805.00	
	H-26	190717	1/2/2005	17,995.00	
	H-27	190936	1/2/2005	140,547.00	
	H-28	190486	1/3/2005	143,395.00	
	H-35	190932	2/10/2005	112,832.00	545,574.00
3	*Supported by BOC ORs with incomplete date*				
	H-30	119402857	12/10/?	15,164.00	
	H-31	119402884	12/10/?	28,202.00	43,366.00
Total Input VAT					**P 2,222,665.54**

Therefore, out of the P9,403,417.40 input VAT claim, only the amount of P6,593,450.19, broken down below, is duly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, as amended, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95:

Amount of Input VAT Claim			P 9,403,417.40
Less:	Disallowances		
	Per ICPA		
	Supported by ORs dated outside the period of claim	P 3,743.63	

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	Without supporting documents	583,558.04	587,301.67
	Per this Court's further verification		2,222,665.54
Substantiated Input VAT			**P 6,593,450.19**

However, a portion of the substantiated input VAT of P6,593,450.19 shall be applied against petitioner's reported output VAT liability of P540,087.49.[36] Hence, only the remaining input VAT of P6,053,362.70 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P1,231,960,154.60, and only the input VAT of P5,620,374.27 is attributable to the substantiated zero-rated sales of P1,143,839,795.04, as computed below:

Substantiated Input VAT	P	6,593,450.19
Less: Output VAT		540,087.49
Excess Input VAT	**P**	**6,053,362.70**
Substantiated Zero-Rated Sales	P	1,143,839,795.04
Divided by Total Reported Zero-Rated Sales	÷	1,231,960,154.60
Multiplied by Excess Input VAT	×	6,053,362.70
Excess Input VAT attributable to Substantiated Zero-Rated Sales	**P**	**5,620,374.27**

As correctly noted by the commissioned Independent CPA in his second Amended Report[37] dated June 16, 2008, petitioner's Quarterly VAT Returns from the second quarter of 2005 to the second quarter of 2006[38] proved that the input VAT of P5,620,374.27 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 in the judicial levels. 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, as amended, starts

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[36] Exhibit "J-13", line 14C.
[37] Exhibit "E", pages 6 and 7, under No. 22 of the findings.
[38] Exhibits "J-14" to "J-18".

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. [39] Counting from March 31, 2005, the close of the first quarter of 2005, petitioner had until March 31, 2007 within which to file its claim both administratively and judicially. Clearly, the administrative claim filed on March 6, 2006[40] and the Petition for Review filed on March 30, 2007 fall within the two-year prescriptive period.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **FIVE MILLION SIX HUNDRED TWENTY THOUSAND THREE HUNDRED SEVENTY FOUR PESOS AND 27/100 (P5,620,374.27)**, representing its unutilized input VAT for the first quarter of taxable year 2005.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

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[39] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008.
[40] Par. 5, Stipulation of Facts and Issues, docket, p. 5.

ATTESTATION

I attest 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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice