REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7185
Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAR 23 2009, 9:15 Am.

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AMENDED DECISION

CASANOVA, *J.*:

On April 9, 2008, petitioner filed a "**Motion for Reconsideration/New Trial**", of Our Decision promulgated on March 13, 2008.

In its Motion for Reconsideration/New Trial, petitioner presented the following arguments:

"I

THE HONORABLE COURT'S CONCLUSION THAT PETITIONER'S DIRECT EXPORT SALES OF GOLD TO ENGLAND DO NOT QUALIFY FOR ZERO-RATING, BECAUSE THE SALES INVOICES SUPPORTING THE SALES DO NOT CONFORM WITH THE INVOICING REQUIREMENTS UNDER SECTIONS 113, 237 AND 238 OF THE TAX CODE, IS NOT IN ACCORD WITH THE DECISION OF THE SUPREME COURT IN THE LANDMARK CASE OF <u>INTEL TECHNOLOGY OF THE PHILIPPINES VS. COMMISSIONER OF INTERNAL REVENUE</u>.

II

> THE HONORABLE COURT'S PRESUMPTION THAT THE INVOICES SUBMITTED BY PETITIONER IN SUPPORT OF ITS DIRECT EXPORT SALES OF COPPER CONCENTRATES TO JAPAN PERTAIN TO THE 2ND QUARTER OF 2003 AND FALL OUTSIDE THE PERIOD COVERED BY THE CLAIM IN THE PETITION, DOES NOT CONFORM WITH THE FACT AND EVIDENCE.

III

> THE HONORABLE COURT ERRED IN CONCLUDING THAT THE SALES INVOICES COVERING PETITIONER'S INDIRECT EXPORTS TO PASAR FALL OUTSIDE THE PERIOD OF THE CLAIM, WHICH IS THE 1ST QUARTER OF 2003, AND THAT SAID INDIRECT EXPORT SALES TO PASAR CANNOT QUALIFY FOR VAT ZERO-RATING. THIS CONCLUSION IS CONTRARY TO THE FACTS AND THE EVIDENCE."

On August 29, 2008, We issued a Resolution with the following dispositive portion:

> **WHEREFORE,** petitioner's **'Motion for Reconsideration/New Trial'** is **PARTIALLY GRANTED**. This Court **DENIES** petitioner's prayer for the reconsideration of its sales to Johnson Matthey as zero-rated but otherwise **GRANTS** the prayer for the presentation of additional documents with respect to its sales to Nippon Mining and Metals Co., Ltd. and Philippine Associated Smelting and Refining Corporation.
>
> Let this case be set for hearing on September 16, 2008 at 9:00 AM for the presentation of the originals or certified true copies of the provisional invoices for consideration and evaluation without prejudice to the final determination of petitioner's right to the additional tax refund.

The case was reset for hearing on October 16, 2008 and on such date, petitioner presented an additional witness plus documentary exhibits and rested its case[1]. Petitioner filed its Supplemental Formal Offer of Evidence[2] on October

[1] *Rollo*, p. 247.
[2] *Rollo*, pp. 249-250.

27, 2008 which this Court resolved[3] on January 13, 2009 by admitting all its additional documentary evidence.

In Our assailed Decision[4], We ruled that under Section 112(A) of the National Internal Revenue Code (1997 NIRC) to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with[5]:

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 directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

With respect to the first requirement, We ruled that petitioner's sales to Pan-Pacific Copper Co., Ltd. of Tokyo, Japan (JAPAN), as the assignee of Nippon Mining and Metals Co. Ltd.[6], is entitled to VAT zero-rating under Section 106(A)(2)(a)(1) of the 1997 NIRC, while the sales to Philippine Associated Smelting and Refining Corporation (PASAR) is zero-rated under Section 106(A)(2)(a)(1) of the 1997 NIRC in relation to Articles 23 and 77(2) of the Omnibus Investments Code and as clarified under RMC No. 74-99. However, We further said that petitioner must first substantiate its sales by proper VAT sales invoices, among others, to be qualified for a refund. Evidence then forwarded to this Court showed that the sales invoices covering petitioner's indirect export

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[3] *Rollo,* p. 272.
[4] *Rollo,* pp. 172-193.
[5] *Rollo,* pp. 176-177.
[6] Exhibit "F-2".

sales to PASAR, in the amount of US$8,409,789.00, and to JAPAN, in the amount of US$8,616,117.00, fell outside the subject period of claim, thus, petitioner's reported sales cannot qualify for VAT zero-rating[7].

Upon review of the additional documents presented, this Court resolves to partially grant petitioner's claim for refund of unutilized input Value Added Tax (VAT) arising from its indirect export sales to PASAR and direct export sales to JAPAN.

In its Motion for Reconsideration/New Trial, petitioner explained that the sales invoices presented for consideration are not actually out of period of claim considering that the same invoices pertained to transactions occurring within the 1st quarter of 2003. In support of its motion, petitioner presented and formally offered in evidence the provisional invoices it issued to JAPAN and PASAR for the first quarter of 2003. The details of the invoices are as follows:

Provisional Invoice No.	Date	Exhibit No.	Estimated Value	90% Provisional Payment	Exh. No.
JAPAN[8]					
2268	03/10/03	"N"	$3,763,889.39	$3,387,500.45	"N-1"
2261	01/28/03	"O"	$3,592,598.18	$3,233,338.36	"O-1"
PASAR[9]					
2256	01/17/03	"P"	$1,180,798.51	$1,692,718.66	"P-1"
2262	02/13/03	"Q"	$1,240,453.26	$1,116,407.93	"Q-1"
2263	02/19/03	"R"	$1,015,223.65	$913,703.99	"R-1"
2266	03/06/03	"S"	$972,051.50	$874,846.35	"S-1"
2269	03/17/03	"T"	$962,880.23	$866,592.21	"T-1"
2272	03/31/03	"U"	$965,359.21	$868,823.29	"U-1"

[7] Decision, *Rollo*, p. 178.
[8] Exhibits "N" and "O".
[9] Exhibits "P" to "U".

With the said provisional invoices, petitioner proved that the final sales invoices[10] supporting its export sales of copper concentrates to JAPAN and PASAR are valid and within the period of the claim.

The sales to JAPAN has a peso equivalent of P468,960,762.43 computed as follows:

Declared Zero-Rated Sales in Php[11]	977,327,573.21
Divided by Declared Zero-Rated Sales in US$[12]	17,956,233.00
Average peso to dollar rate	54.4283187465
Multiplied by Substantiated Zero-rated Sales in US$	8,616,117.00
Substantiated Zero-Rated Sales in Php	**468,960,762.43**

The sales to PASAR, on the other hand, has a peso equivalent of P457,730,676.28, as computed below:

Declared Zero-Rated Sales in Php	977,327,573.21
Divided by Declared Zero-Rated Sales in US$	17,956,233.00
Average peso to dollar rate	54.4283187465
Multiplied by Substantiated Zero-rated Sales in US$	8,409,789.00
Substantiated Zero-Rated Sales in Php	**457,730,676.28**

As reported in petitioner's amended VAT return for the 1st quarter of 2003[13], petitioner's zero-rated sales amount to US$17,956,233.00 as broken down below:

Particulars		**Amount**
Current Quarter's Shipments:		
Direct export of Copper to Japan	US$	8,616,117.00
Indirect exports of copper to PASAR		8,409,789.00
Direct export of gold to England		83,090.00
	US$	17,108,996.00
Previous Quarters' Shipments		
Adjustment to correct previous billings		(847,237.00)
Total Zero-Rated Sales	**US$**	**17,956,233.00**

[10] Exhibits "I-1" and "I-2".
[11] Exhibit "A-1".
[12] Exhibit "H", page 2.
[13] Exhibit "H"; Decision, *Rollo,* p. 178.

Petitioner's computation of catch-up adjustments amounting to US$847,237.00 cannot be considered for VAT zero-rating for petitioner's failure to present supporting documents. Likewise, the sales to England shall be excluded. In sum, out of the reported zero-rated sales of US$17,956,233.00 for the 1st quarter of 2003, only the following export sales in the total amount of US$17,025,906.00 with peso equivalent of P926,691,438.71, qualify for VAT zero-rating:

	In US Dollars	In Phil Peso
Direct Exports of Copper to Japan	8,616,117.00	468,960,762.43
Indirect Exports of Copper to PASAR	8,409,789.00	457,730,676.28
Total	**17,025,906.00**	**926,691,438.71**

We proceed to determine compliance with the second requirement, ie., whether petitioner's input taxes in connection with its zero-rated sales for the 1st quarter of 2003 were duly incurred or duly substantiated.

In its VAT return for the 1st quarter of 2003[14], petitioner reflected an input VAT of P190,577.11 on domestic purchases and an input VAT of P5,575,885.00 on importations totaling to P5,766,462.11, as shown below:

		Purchases		Input Tax
Domestic Purchases - Capital Goods	P	1,905,771.10	P	190,577.11
Importations - Goods other than Capital Goods		55,758,850.00		5,575,885.00
Total	**P**	**57,664,621.10**	**P**	**5,766,462.11**

The Court commissioned an independent CPA to examine the voluminous documents of petitioner in support of its claim for refund.

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[14] Exhibit "A"/L5.

With regard to the input taxes on domestic purchases, records reveal that petitioner was not able to present sales invoices/official receipts to support its claim of input VAT on domestic purchases. Consequently, the input VAT on the said purchases from its claim for the petitioner's failure to substantiate its claim by clear and convincing proof should be disallowed.

As regards the input VAT payment of P5,575,885.00 on petitioner's importations, the ICPA noted the following findings[15]:

Particulars		**Amount**
Input taxes paid on importation of:		
a. Capital goods	P	4,049,449.00
b. Other than capital goods		605,161.00
c. No supporting documents		921,275.00
TOTAL	**P**	**5,575,885.00**

Upon verification, this Court finds that only the amount of P4,654,610.00 (items a and b) is duly substantiated by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997 as implemented by Sections 4.104-1, 4.104-5 & 4.108-1 of Revenue Regulations No.7-95 and can be a proper subject of a claim for refund or tax credit. The remaining amount of P921,275.00[16] should be denied for the absence of any supporting documents attesting the existence of such input VAT on importations.

With respect to the third requisite, petitioner has likewise complied with the same considering that its export sales and sales to PEZA-registered entities are zero-rated under Sections 106 (A)(2)(a)(1) and 106 (A)(2)(a)(5). However, a portion of the substantiated input VAT of P4,654,610.00 shall be applied against

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[15] Exhibit "H", page 5.
[16] Exhibit K, page 1.

petitioner's reported output VAT liability of P216,649.51[17]. Hence, only the remaining input VAT of P4,437,960.49 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P977,327,573.21 and only the input VAT of P4,208,026.16 is attributable to the substantiated zero-rated sales of P926,691,438.71, as computed below:

Substantiated input VAT	P	4,654,610.00
Less: Output Tax		216,649.51
Excess input VAT	**P**	**4,437,960.49**

Substantiated Zero-rated Sales	P	926,691,438.71
Divided by Total Reported Zero-Rated Sales	÷	977,327,573.21
Subtotal	P	0.95
Multiplied by Excess Input VAT	x	4,437,960.49
Excess Input VAT attributable to Substantiated Zero-Rated Sales	**P**	**4,208,026.16**

As evidenced by its Quarterly VAT Returns[18] from the 2nd quarter of 2003 to 2nd quarter of 2004, petitioner was able to prove that the input VAT of P4,208,026.16 was not applied against any output VAT in the succeeding quarters. Although petitioner carried over the claimed unutilized input VAT for the 1st quarter of taxable year of 2003 to the succeeding 2nd quarter of 2003 until the 2nd quarter of 2004, the same was deducted as "Any VAT Refund/TCC Claimed"[19] from the total available input tax of P104,273,970.26 in the 2nd quarter of 2004. In other words, the subject claim no longer formed part of the excess input VAT of P41,512,391.47[20] as of the 2nd quarter of 2004 which was to be carried over/applied to the succeeding 3rd quarter of 2004.

[17] Exhibit "A"/L5.
[18] Exhibits "L6" to "L10".
[19] Exhibit "L10a".
[20] Exhibit "L10b".

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 entitled ***COMMISSIONER OF INTERNAL REVENUE vs. MIRANT PAGBILAO CORPORATION (Formerly SOUTHERN ENERGY QUEZON, INC.), G.R. No. 172129, September 12, 2008***, 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.

Records show that petitioner filed its administrative and judicial claims on July 22, 2004[21] and March 31, 2005, respectively, both within the two-year period reckoned from March 31, 2003, the end of the 1st quarter of 2003.

WHEREFORE, in view of the foregoing, petitioner's claim for refund of its unutilized input VAT for the 1st quarter of taxable year 2003 with respect to its sales to Philippine Associated Smelting and Refining Corporation (PASAR) and Pan-Pacific Copper Co., Ltd. of Tokyo, Japan (JAPAN) is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED to REFUND** to petitioner the reduced amount of **P4,208,026.16.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[21] Petition for Review, Annex "C" and Annex "D".

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

C E R T I F I C A T I O N

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