REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILEX MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8808

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:

MAY 19 2016
9:30 a.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This case involves a Petition for Review filed by Philex Mining Corporation to seek the refund of the amount of ₱43,739,035.58, allegedly representing unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to its zero-rated sales for the first quarter of taxable year 2012.

STATEMENT OF FACTS

Petitioner Philex Mining Corporation is a domestic corporation organized under Philippine laws, with principal office at 27 Brixton St., Pasig City.[1] It is engaged in the mining business, which includes the exploration, development, and operation of mining properties for commercial production, and the marketing of mine products it produces, consisting of gold bullion and

[1] Par. 1, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), docket, vol. 1, p. 103

copper ore concentrates.[2] Petitioner is a VAT-registered taxpayer with Taxpayer's Identification No. 000-283-731-000, as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN8RC0000041684.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner entered into a Long Term Gold and Copper Concentrates Sales Agreement[4] with Pan Pacific Copper Co., Ltd. on March 11, 2004, and executed Contract No. P-100.00081[5] and Contract No. P-100.00081 Addendum No. 1[6] on August 16, 2007 and March 16, 2009, respectively, with Louis Dreyfus Commodities Metals Suisse SA for the sale and purchase of copper concentrates from petitioner.

On April 24, 2012, petitioner filed its Quarterly VAT Return for the first quarter of taxable year 2012 through the Electronic Filing and Payment System (EFPS).[7] Subsequently, petitioner amended the said Quarterly VAT Return, filed through the EFPS, on September 25, 2013.[8]

Petitioner then applied for the refund of the input VAT it purportedly paid during the first quarter of 2012 through the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF-OSS" for brevity), and submitted the supporting documents on December 17, 2013.[9]

Due to the inaction of respondent on petitioner's administrative claim for refund, petitioner filed the present Petition for Review before this Court on April 22, 2014.[10]

In the Answer[11] filed on June 27, 2014, respondent interposed special and affirmative defenses: that petitioner must prove that it is paid the alleged VAT input taxes for the periods in question; that petitioner must prove that the same alleged VAT input taxes were not utilized against any output tax liability; that petitioner must prove that the alleged VAT input taxes for the periods in

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[2] Par. 3, Summary of Facts Admitted, SFI, docket, vol. 1, p. 104
[3] Exhibits "P-14-i" and "P-14-j", docket, vol. 1, pp. 677 to 678
[4] Exhibit "P-3", docket, vol. 1, pp. 62 to 87
[5] Exhibit "P-16", docket, vol. 1, pp. 682 to 690
[6] Exhibit "P-16-a", docket, vol. 1, pp. 691 to 692
[7] Exhibit "P-14-a", docket, vol. 1, pp. 661 to 662
[8] Exhibit "P-14-b", docket, vol. 1, pp. 663 to 664
[9] Exhibits "P-2", "P-2-a", "P-2-b", "P-2-b-1", and "P-2-c", docket, vol. 1, pp. 57 to 61
[10] Docket, vol. 1, pp. 1 to 4
[11] Docket, vol. 1, pp. 26 to 30

question are attributable to its alleged VAT zero-rated export sales; that petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law; that petitioner's assertion that its zero-rated export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas* ('BSP') cannot be accorded weight. Plain allegations without any evidentiary documents to support its claim will not justify petitioner's application for tax refund; that petitioner must prove its compliance with the following, viz:

> a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations;
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> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);
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> c. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of the such claim;
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> d. That the input taxes of Php43,739,035.58 allegedly representing petitioner's excess and unutilized input VAT from its purchases of goods and services from VAT registered suppliers were:
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> i. paid by the petitioner;
> ii. attributable to its zero-rated or effectively zero-rated sales; and
> iii. such input taxes paid should not have been applied against any output tax.

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e. That petitioner's claim for tax credit/refund allegedly representing petitioner's excess and unutilized input VAT in the amount of Php43,739,035.58 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended.

The pre-trial conference was scheduled on August 14, 2014. Accordingly, the Pre-Trial Brief for Petitioner[12] was filed on August 12, 2014; while respondent's Pre-Trial Brief[13] was filed on September 15, 2014.

The parties submitted their Stipulation of Facts and Issues[14] on September 23, 2014. Thereafter, the Court issued the Pre-Trial Order[15] on October 14, 2014.

Upon motion of petitioner, the Court commissioned Atty. Conrado M. Briones, as the Independent Certified Public Accountant (CPA) for this case on October 16, 2014.[16]

During trial, petitioner presented Ms. Sylvia P. Delos Santos and Atty. Conrado M. Briones as its witnesses.

Petitioner filed a Formal Offer of Evidence on February 23, 2015, consisting of Exhibits "P-1" to "P-10", "P-12", and "P-14" to "P-16", inclusive of submarkings. In the Resolution[17] dated April 14, 2015, the Court admitted all offered exhibits of petitioner.

On the other hand, respondent's counsel manifested during the hearing on February 9, 2015 that she has no evidence to present. Accordingly, the Court gave the parties a thirty (30)-day period to file their respective memoranda.

The case was declared submitted for decision on June 11, 2015,[18] after the filing of petitioner's Memorandum[19] on May 7, 2015 and of respondent's Memorandum[20] on June 4, 2015.

[12] Docket, vol. 1, pp. 44 to 48
[13] Docket, vol. 1, pp. 93 to 94
[14] Docket, vol. 1, pp. 103 to 106
[15] Docket, vol. 1, pp. 125 to 129
[16] Docket, vol. 1, p. 131
[17] Docket, vol. 2, pp. 697 to 698
[18] Resolution, docket, vol. 2, p. 726
[19] Docket, vol. 2, pp. 699 to 712
[20] Docket, vol. 2, pp. 719 to 724

STATEMENT OF ISSUE

The parties submitted the following issue[21] for this Court's resolution:

> Whether or not petitioner is entitled to the refund of the alleged excess input tax in the amount of ₱43,739,035.58 for the first quarter of 2012.

DISCUSSION/RULING

Petitioner anchors its claim for refund on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Based on the above-quoted provision, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of unutilized input VAT attributable to such zero-rated or effectively zero-rated sales upon compliance with the following requisites:

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[21] Statement of the Issue, SFI, docket, vol. 1, p. 104

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes were 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.

Timeliness of the Petition

As categorically stated under Section 112(A) of the NIRC of 1997, as amended, the application for tax credit certificate or refund must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the first quarter of taxable year 2012, which closed on March 31, 2012. Counting two years from this date, petitioner had until March 31, 2014, within which to file an administrative claim for refund for the first quarter of taxable year 2012.

Thus, petitioner's administrative claim for refund filed on December 17, 2013 with the DOF-OSS under Claimant Information Sheet No. 68010[22], together with Claim Stub No. 68010[23] and letter to the DOF-OSS[24] for the refund of the amount of ₱43,739,035.58, was filed well within the two-year prescriptive period prescribed under Section 112(A) of the NIRC of 1997, as amended.

As to the timeliness of petitioner's judicial appeal, the pertinent provision is Section 112(C) of the NIRC of 1997, as amended, which states:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (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

[22] Exhibit "P-2", docket, vol. 1, p. 258
[23] Exhibit "P-2-a", docket, vol. 1, p. 259
[24] Exhibit "P-2-b", docket, vol. 1, pp. 260-261

> complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> 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."

Based on the foregoing, respondent has one hundred twenty (120) days from the date of submission of complete documents by petitioner in support of its refund claim to act on the claim for refund or tax credit by either granting or denying the same. In case of an adverse ruling, the aggrieved taxpayer may, within thirty (30) days from receipt of the decision or after the expiration of the 120-day period without any action thereon, seek judicial intervention via Petition for Review to be filed with the Court of Tax Appeals.

Respondent contends that petitioner failed to prove that it complied with the submission of complete documents in support of its application for refund. As a result, the counting of the 120-day period within which the BIR Commissioner shall grant a refund did not start to run. In such case, the running of the 30-day period within which petitioner may appeal its claim with this Court has yet to commence.[25] Therefore, this Petition for Review was allegedly filed prematurely and should be dismissed accordingly.[26]

However, records indicate that upon filing of its administrative claim on December 17, 2013, petitioner simultaneously submitted the documents in support of its claim. This is evident from petitioner's letter[27], through Ms. Sylvia P. Delos Santos – petitioner's Accounting Manager, to wit:

> "In this connection, we are submitting herewith our application for Tax Credit corresponding to our input VAT payments for the first quarter of 2012 in the amount of **₱43,739,035.58**. This amount is composed of the following:

a. Input Tax for Importation	₱ 43,282,410.00
b. Input Tax for purchases of taxable services	673,497.27
TOTAL	**₱43,955,907.27**
Less: Output VAT	**(216,871.69)**
Total Input Tax Claims (Net)	**₱43,739,035.58**

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[25] Respondent's Memorandum, docket, vol. 2, p. 721
[26] Respondent's Memorandum, docket, vol. 2, p. 722
[27] Exhibit "P-2-b", docket, vol. 1, pp. 260-261

Enclosed are the following:

a. Application for Tax Credit of Value Added Tax paid (BIR Form no. 2552) – (Folder No. 01)
b. Certification from BOI certifying that Philex is a registered Manufacturer-Exporter with 100% Export Sales (Photocopy) (Folder No. 01)
c. Vat Return for the first quarter of 2012 (photocopy) BIR Form No. **2550M** & **2550Q** – (Folder No. 01)
d. VAT return showing TCC applied – (Folder No. 01)
e. Certification of Bank Dollar Remittances Photocopy (Folder No. 01)
f. Registration Certificate of Value Added Tax, Photocopy BIR Form No. 2303 (Folder No. 01)
g. Photocopy of VAT Registration payment for period of claim (Folder No. 01)
h. Reconciliation of export sales VS Inward remittances for the period with provisional and final invoices for the period (Folder No. 01)
i. Photocopy of Annual Income Tax Return (Folder No. 01)
j. Photocopy of Audited Financial Statements complete with notes to FS duly received by BIR (Folder No. 01)
k. Sworn statements of amount of sales declared with breakdown as to amount of zero-rated and taxable sales (Folder No. 01)
l. Sworn statements that the company did not file any and/or will not file any similar claim from the BOI, BOC and BIR (Folder No. 01)
m. Sworn statements that the ending inventory as of close of the period being claimed has been used directly in the product exported (Folder No. 01)
n. Photocopy of Verification of Delinquent Accounts and Non-Availment from Revenue District Office (Folder No. 01)
o. Letter request address to executive director of DOF that our company has not filed similar claim covering the same period (Folder No. 01)
p. Photocopy of authorization from the company designating the contact person/s (Folder No. 01)
q. Photocopy of BIR authority to use loose-leaf sales invoices (Folder No. 01)
r. Local purchases- Check Disbursement Register (CDR) (Folder No. 02)
s. Purchases on importation (Folder No. 03)"

The term "complete documents" under Section 112(C) of the NIRC of 1997, as amended, should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that respondent ought to know the tax records of all taxpayers.[28]

Furthermore, since the records do not show that a written notice was sent by the BIR, informing petitioner that the latter's documents were incomplete or requiring petitioner to submit additional documents, the 120-day period started to run from December 17, 2013, the date when petitioner filed its administrative claim together with the supporting documents.

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[29], the Supreme Court held that it is the taxpayer and not the BIR who would determine what relevant supporting documents to submit as basis of its claim. Likewise, the question of "when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period" had already been clarified therein, to wit:

> "xxx for purposes of determining ***when*** the supporting documents have been completed – *it is the taxpayer who ultimately determines when complete documents have been submitted for purposes of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.
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> xxx xxx xxx
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> Then, except in those instances where the BIR would require additional documents to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has the right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As

[28] *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case Nos. 7846 and 7865, January 16, 2012

[29] G.R. No. 207112, December 8, 2015

such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are *actually* complete as required by law – is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

xxx xxx xxx

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

xxx xxx xxx

As explained earlier xxx, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court."

Applying Section 112(C) of the NIRC of 1997, as amended, the following are the pertinent dates to petitioner's claim for refund:

Date of Filing of the Administrative Claim and Submission of Documents	End of the 120-day period for the BIR Commissioner to decide on the claim	End of the 30-day period from the expiration of the 120-day period	Date of Filing of the Judicial Claim
December 17, 2013	April 16, 2014	May 16, 2014	April 22, 2014

Evidently, petitioner's appeal, by way of a Petition for Review filed on April 22, 2014, was filed well within the period prescribed by law.

Whether petitioner had VAT zero-rated sales for the first quarter of 2012

Petitioner filed with the BIR its amended Quarterly VAT Return for the first quarter of taxable year 2012[30], declaring, among others, the following:

Vatable Sales	₱ 1,807,264.08
Zero-Rated Sales	2,516,482,837.13
Total Sales	₱ 2,518,290,101.21
Output Tax Due	₱ 216,871.69
Less: Allowable Input Tax	
Input Tax Carried Over from Previous Quarter	271,609,053.94
Current Transactions	
Importation of Goods Other than Capital Goods	43,282,410.00
Domestic Purchase of Services	673,497.27
Total Available Input Tax	315,564,961.21
Less: VAT Refund/TCC claimed	96,513,305.49
Total Allowable Input Tax	219,051,655.72
Tax Still Payable/(Overpayment)	**₱(218,834,784.03)**

The Court-commissioned Independent CPA, Atty. Conrado M. Briones, noted in his Amended Report[31] dated December 17, 2014 that petitioner's zero-rated sales for the first quarter of 2012 in the amount of ₱2,516,482,837.13 have US dollar value of 58,943,664.00, consisting of the following:

[30] Exhibit "P-14-b", docket, vol. 1, pp. 663 to 664
[31] Exhibit "P-5", docket, vol. 1, pp. 298 to 307

Provisional billings for direct export sales:	
Sales of copper:	
Louis Dreyfus Commodities Metals Suisse SA	US$ 52,733,356.00
Sales of gold:	
Heraeus Ltd.	1,099,909.00
Sub-total	53,833,265.00
Adjustment to previous quarters' provisional billings	
Pan Pacific Copper Co., Ltd.	4,257,178.00
Louis Dreyfus Commodities Metals Suisse SA	853,221.00
Sub-total	5,110,399.00
Total	**US$58,943,664.00**

Petitioner claims that the shipments and sales of its mineral products to Pan Pacific Copper, Co., Ltd. of Tokyo, Japan and to Louis Dreyfus Commodities Metals Suisse SA of Switzerland are 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
>
> (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);"

The above-quoted provision, however, should not be taken in isolation but should be read in conjunction with Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, which prescribe that a VAT taxpayer, like herein petitioner, for every sale, shall issue a VAT invoice which must contain the following information:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

"SEC. 4.113-1. ***Invoicing Requirements.*** –

(A) **A VAT-registered person shall issue:** –

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

In addition to the above-stated requirements, the invoice or receipt must be duly registered with the BIR as prescribed under Sections 237 and 238 of the NIRC of 1997, as amended, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* – All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered** receipts or **sales** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx" *(Emphasis supplied)*

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1. Sales Invoice as proof of sale of goods;
2. Export Declaration and Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Further, the sales invoices supporting the export sales must be registered with the BIR and must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

For the period covering the first quarter of 2012, petitioner allegedly shipped mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, Japan and to Louis Dreyfus Commodities Metals Suisse SA of Switzerland and generated export sales, as evidenced by Export Declarations[32], Bills of Lading[33], Provisional Invoices[34], and Final Invoices[35].

The Court notes that 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, however, explains the reason for the much

[32] Exhibits "P-6-a" to "P-6-i", docket, vol. 1, p. 342
[33] Exhibits "P-6-j" to "P-6-r", docket, vol. 1, p. 343
[34] Exhibits "P-6-s" to "P-6-aa", docket, vol. 1, p. 344
[35] Exhibits "P-6-bb" to "P-6-jjj", docket, vol. 1, p. 345

later dates of the Final Invoice through the Judicial Affidavit[36] of Ms. Sylvia P. Delos Santos, the Accounting Manager of petitioner, to wit:

> "Q. No. 17. – Please explain why for each shipment of mineral products to the Japanese buyer Petitioner issues two invoices to the buyer, namely, a provisional invoice and a final invoice, and why the final invoice is issued much later than the date of shipment.
>
> A. No. 17. – Clause 9 of the Agreement requires the Buyer to pay the Seller the price of each shipment of copper concentrates in two stages: **First**, a **provisional payment** at the time of shipment equal to 90% of the provisional price as determined by the Seller based on shipped weight and the Seller's provisional assay, and, **Second**, a **final payment** covering the balance of the concentrate value (after deducting the 90% provisional payment from the final concentrate value) upon presentation of the final invoice after all data necessary to determine the final settlement (including weights and moisture content, final assays for copper, gold, silver contents and impurities [which are done in Buyer's smelting/refining plant at the port of discharge], and final prices for payable copper, payable gold and payable silver) are available.
>
> On the basis of the above manner of payment, Petitioner as Seller, issued Provisional Invoices to the Buyer at the time of each shipment of copper concentrates during the quarter in question covering the 90% provisional payments. After all the data necessary to determine the final settlement (such as weight, moisture, final assays and final prices) are available, Petitioner issued to the Buyer the Final Invoices reflecting the Final Concentrate Value and the Final Balance Due Philex (after deducting the 90% provisional payment). The payments received by Petitioner under the Final Invoices are only the final balances since the bulk of the payments were already received as 90% provisional payments under the provisional invoices issued at the time of each shipment.
>
> The period and procedure of weighing, sampling, moisture determination and assaying of each copper concentrate shipment are provided for in Clause 10 of the Long Term Sales Agreement. In Clause 10.1, it is provided that all weighing, sampling, sample preparation and determination of moisture content shall be made by receiving smelter after receipt of the concentrates. Clause 10.4 provides that from the samples taken, assay for copper, gold and

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[36] Exhibit "P-1", docket, vol. 1, pp. 255 to 256

silver shall be made independently by the respective assayers of Seller and Buyer, and the parties shall exchange the result of the assays simultaneously on a lot by lot basis within forty (40) days from the date samples have been made available.

Clause 10.5 further provides that if there is a difference between Seller and Buyer assays for any lot, the parties shall submit such lot for settlement by **umpire** assay. The umpire is selected in rotation from a designated list.

It is the above intricate and long procedure provided in Clause 10, for weighing, sampling, sample preparation, determination of moisture content, independent assaying by the respective assays of Seller and Buyer, designation of and referral to an independent umpire for settlement of the difference between Seller and Buyer assays, to arrive at the price of final concentrate value, that accounts for the lag or delay in the issuance by Petitioner of the Final Invoices, because a Final Invoice cannot be issued until after a final settlement as to weight, moisture content, assay and price is arrived at."

In other words, the considered date of the sale transaction is the shipment date indicated in the Bills of Lading. Considering that the Bills of Lading were all dated within the first quarter of 2012, the related Final Invoices which carry dates much later than the dates when the sales or shipments were made, are deemed valid.

Per petitioner's Schedule of Export Sales[37], zero-rated sales in the amount of US$58,943,665.00 for the first quarter of 2012 are broken down as follows:

Provisional Invoice			90% Provisional Drawing	Final Invoice			Amount Recorded in the General Ledger
Exhibit	Invoice No.	Amount (in US$)		Exhibit	Invoice No.	Amount (in US$)	
Current Quarter's Shipments							
Copper							
P-6-s	2636	25,826,295.00	23,243,665.43	P-6-bb	2645	24,784,411.00	26,964,478.00
P-6-t	2637	25,364,038.00	22,827,633.96	P-6-cc	2644	23,567,388.00	25,768,878.00
Gold							
P-6-u	PAD-AUREX 118	1,100,812.00		P-6-dd	PAD-AUREX 118	1,097,592.00	1,099,909.00
		52,291,145.00	**46,071,299.39**			**49,449,391.00**	**53,833,265.00**
Catch-up Adjustments to Prior Quarter's Shipments							
P-6-v	2622	22,476,014.00	20,228,412.92	P-6-ee	2633	21,430,516.00	(463,156.00)

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[37] Exhibit "P-6", docket, vol. 1, pp. 340 to 341

P-6-w	2626	24,893,171.00	22,403,853.90	P-6-ff	2634	24,548,457.00	523,086.00
P-6-x	2627	24,647,469.00	22,182,722.32	P-6-gg	2635	26,558,589.00	184,295.00
P-6-y	2629	24,305,698.00	21,875,128.27	P-6-hh	2638	24,275,025.00	571,350.00
P-6-z	2631	26,582,495.00	23,924,245.53	P-6-ii	2642	25,885,794.00	2,978,448.00
P-6-aa	2632	22,143,680.00	19,929,312.11	P-6-jj	2639	23,852,922.00	1,316,377.00
		145,048,527.00	**130,543,675.05**			**146,551,303.00**	**5,110,400.00**
Total		**197,339,672.00**	**176,614,974.44**			**196,000,694.00**	**58,943,665.00**

A scrutiny of the sales invoices, both provisional and final, supporting petitioner's sales of gold to Heraeus Ltd. amounting to ₱1,099,909.00, shows that the same were not duly registered with the BIR as there was no BIR Permit number reflected thereon and the word "VAT" after petitioner's TIN was not imprinted. Likewise, the word "zero-rated sales" was not stamped nor imprinted on the Provisional Invoice. Thus, petitioner's reported sales in the amount of ₱1,099,909.00 cannot qualify for VAT zero-rating.

Furthermore, to ascertain whether the above breakdown of zero-rated sales were paid for in acceptable foreign currency and the payments were accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, the Court considered petitioner's Summary of Sales and Remittances[38], as well as the Certificates of Inward Remittances issued by the local banks and the passbook pages, showing the amounts credited and the dates of remittances.[39]

An examination of the aforesaid documents confirms that only ninety percent (90%) of the export sales per Provisional Invoices for the current quarter's shipments (*i.e.*, first quarter of 2012), corresponds to the inward remittances received by petitioner. Since petitioner did not submit any documentary evidence to prove that the remaining receivable was subsequently collected and accounted for in acceptable foreign currency, the same shall be disregarded in computing the valid zero-rated sales.

As regards the Catch-up Adjustments to Prior Quarter's Shipments, the final balance due per Final Invoices (net of 90% provisional drawings) matches the inward remittances, except for Final Invoice Nos. 2642 and 2639 (Provisional Invoice Nos. 2631 and 2632, respectively) where no proof of inward remittance was presented, to wit:

Catch-up Adjustments to Prior Quarter's Shipments						
Prov. Invoice	**Final Invoice**	**Amount Recorded in the GL (US$)**	**Amount per Final Invoice (US$)**	**90% Provisional Drawing (US$)**	**Balance - Should be Remitted (US$)**	**Actual Remittance (US$)**
2622	2633	(463,156.00)	21,430,516.00	20,228,412.92	1,202,103.08	1,217,116.21

[38] Exhibit "P-7", docket, vol. 1, p. 381
[39] Exhibits "P-7-a" to "P-7-p", docket, vol. 1, pp. 383 to 398

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2626	2634	523,086.00	24,548,457.00	22,403,853.90	2,144,603.10	2,144,598.42
2627	2635	184,295.00	26,558,589.00	22,182,722.32	4,375,866.68	4,375,859.59
2629	2638	571,350.00	24,275,025.00	21,875,128.27	2,399,896.73	2,399,897.02
2631	2642	2,978,448.00	25,885,794.00	23,924,245.53	1,961,548.47	
2632	2639	1,316,377.00	23,852,922.00	19,929,312.11	3,923,609.89	
Total		**5,110,400.00**	**146,551,303.00**	**130,543,675.05**	**16,007,627.95**	**10,137,471.24**

As a result, the amount of US$10,956,894.06, representing the difference between the export sales as recorded in the General Ledger and the corresponding inward remittances for the first quarter of 2012 shipments, shall be disallowed as zero-rated sales, detailed below:

Provisional Invoice	Final Invoice	Amount Recorded in the General Ledger (US$)	Inward Remittance (US$)	Difference (US$)
2636	2645	26,964,478.00	23,243,660.43	3,720,817.57
2637	2644	25,768,878.00	22,827,626.51	2,941,251.49
Subtotal		**52,733,356.00**	**46,071,286.94**	**6,662,069.06**
2622	2633	(463,156.00)	1,217,116.21	
2626	2634	523,086.00	2,144,598.42	
2627	2635	184,295.00	4,375,859.59	
2629	2638	571,350.00	2,399,897.02	
2631	2642	2,978,448.00		2,978,448.00
2632	2639	1,316,377.00		1,316,377.00
Subtotal		**5,110,400.00**	**10,137,471.24**	**4,294,825.00**
Total				**10,956,894.06**

Accordingly, petitioner's export sales for the first quarter of 2012 with the net adjusted amount of US$46,886,860.94, with peso equivalent of ₱2,001,741,541.59, qualify for VAT zero-rating, as computed below:

Zero-Rated Sales		$ 58,943,664.00
Less: Sales supported by invoice Pad-Aurex 118	1,099,909.00	
Sales without corresponding inward remittances	10,956,894.06	12,056,803.06
Substantiated Zero-Rated Sales		**$ 46,886,860.94**
Multiply by zero-rated sales in Php		2,516,482,837.13
Divided by zero-rated sales in US$		58,943,664.00
Substantiated Zero-Rated Sales		**₱2,001,741,541.59**

Whether petitioner incurred or paid input taxes

Petitioner's Quarterly VAT Return for the first quarter of 2012 reflected input VAT on importations of goods and on domestic purchases of services in the total amount of ₱43,955,907.27, broken down as follows:

Input VAT on:	
Importations of Goods (other than Capital Goods)	₱ 43,282,410.00
Domestic Purchases of Services	673,497.27
Total Input VAT	**₱43,955,907.27**

In order to determine the accuracy of petitioner's declaration, the Independent CPA, Atty. Conrado Briones, examined the voluminous documents of petitioner in support of its claim for refund. Based on his findings, petitioner's claim in the amount of ₱8,581,978.50, as presented below, shall be disallowed for not being properly substantiated by supporting documents, as prescribed under Sections 110(A), 113(B)(2)(a), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:

	Exhibit	Amount
A. Input Taxes on Importations		
1. Supported by original Statement of Settlement of Duties and Taxes (SSDTs), Bank Debit Advices (BDAs) and Import Entry and Internal Revenue Declarations (IEIRDs) only		
- Dated fourth quarter of 2011	P-8-eee to P-8-fff; P-8-kkkkk to P-8-lllll	₱ 1,575,403.00
2. Supported by original SSDTs only		
- Dated fourth quarter of 2011	Exhibits P-9-y to P-9-aa	5,674,660.00
3. Supported by original IEIRDs without Bank validation of payments		
- Dated in the current quarter	Exhibits P-10-a to P-10-c	518,766.00
4. No supporting documents presented		562,405.00
Subtotal		**8,331,234.00**
B. Input Taxes on Domestic Purchases of Services		
1. Supported by original VAT official receipts that are in the name of the Petitioner		
- Dated fourth quarter of 2011	P-12-bb to P-12-qq	22,627.15
2. No supporting VAT official receipts presented (Exhibit P-13)		228,117.35
Subtotal		**250,744.50**
Total		**₱ 8,581,978.50**

In addition, the Court finds that the input taxes in the amount of ₱2,708,275.94, as detailed below, should be disallowed for petitioner's failure to meet the substantiation requirements prescribed by law.

Supplier	Exhibit	Input VAT Amount
1. ***Input VAT claim on importation supported by certified true copy of bank debit advice the input VAT amount of which cannot be ascertained.***		
Arkbro Industries	P-8-rr P-8-xxxx	₱ 2,630,811.00
2. ***Input VAT claim on domestic purchases of services supported by official receipts wherein the input VAT amount were not separately indicated therein.***		
Colossal Printers, Inc.	P-12-d	408.00
Quantuvis Resources Corporation	P-12-e	30,600.00
D' Star Asia Advertising	P-12-f	4,536.00
Mel Printing Services	P-12-g	353.57
Diamond Motor Corp	P-12-i	1,295.53

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Hankyu Hanshin Express Phils., Inc.	P-12-k	108.00
Quantuvis Resources Corporation	P-12-r	3,448.85
Legend Hotels International Corp.	P-12-u	8,124.34
The Plaza Inc.	P-12-v	6,294.64
Crowne Plaza Manila Galleria	P-12-x	1,224.00
Edsa Shangri-La	P-12-y	4,933.20
Monroe Consulting Phils., Inc.	P-12-z	11,031.43
Legend Hotels International Corp.	P-12-qq	5,107.38
sub-total		***77,464.94***
TOTAL		**₱ 2,708,275.94**

Therefore, out of petitioner's reported input VAT of ₱43,955,907.27 for the first quarter of 2012, only the amount of ₱32,665,652.83 represents petitioner's valid input tax, as computed below:

Input VAT for the 1st quarter of 2012		₱ 43,955,907.27
Less: Disallowances		
a) Based on Independent CPA Report	₱8,581,978.50	
b) Per this Court's Findings	2,708,275.94	11,290,254.44
Substantiated Input VAT		**₱32,665,652.83**

A portion, however, of the ₱32,665,652.83 substantiated input VAT shall be applied against petitioner's reported output VAT liability for the first quarter of 2012 in the amount of ₱216,871.69. Hence, only the remaining input VAT of ₱32,448,781.14 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱2,516,482,837.13 (with US$ equivalent of US$58,943,664.00) and only the input VAT of ₱25,811,450.88 is attributable to the substantiated zero-rated sales of ₱2,001,741,541.59 (with US$ equivalent of US$46,886,860.94), as computed below:

Substantiated Input VAT	₱ 32,665,652.83
Less: Output VAT	216,871.69
Excess Input VAT	**₱32,448,781.14**
Multiply by Substantiated Zero-rated Sales	2,001,741,541.59
Divided by Total Reported Zero-Rated Sales	2,516,482,837.13
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	**₱25,811,450.88**

Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns from the second quarter of 2012 to the third quarter of 2013[40], the same remained unutilized since it was deducted in its Quarterly VAT Return for the third quarter of 2013 as "VAT Refund/TCC claimed"[41] from the total available input tax of ₱240,936,818.31[42]. Therefore,

[40] Exhibits "P-14-c" to "P-14-h", docket, vol. 1, pp. 665 to 676
[41] Exhibit "P-14-h (1/2)", line 23D.

the claimed input taxes for the first quarter of 2012 could not have been carried over or utilized in the succeeding fourth quarter of 2013.

In recapitulation, the Court finds petitioner entitled to a refund in the reduced amount of ₱25,811,450.88, representing its unutilized excess input VAT attributable to zero-rated sales for the first quarter of taxable year 2012.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱25,811,450.88**, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales for the first quarter of taxable year 2012.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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[42] Exhibit "P-14-h (1/2)", line 22.

CERTIFICATION

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