REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

CTA CASE NO. **7859**

-versus-

For: Tax Refund for the 1st Quarter of 2006

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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PHILEX MINING CORPORATION,
Petitioner,

CTA CASE NO. **7886**

For: Tax Refund for the 1st Quarter of 2007

-versus-

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, J.J.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 2 0 2011 9:50 A.M.

x---x

DECISION

MINDARO-GRULLA, J.:

These are consolidated cases of two (2) Petitions for Review separately filed by petitioner Philex Mining Corporation against respondent Commissioner of Internal Revenue for the Court in Division, pursuant to Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner seeks a refund of its alleged unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to zero-rated sales for the fourth quarter of 2006 in the amount of P21,037,836.19 (**CTA Case No.** 7859), and for the first quarter of 2007 in the amount of P23,598,857.07 (**CTA Case No.** 7886) or the total amount of P44,636,693.26.

Petitioner is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1997, and under BIR Form No. 2303 as of January 31, 1997. Petitioner likewise had its Application for Zero-Rate pursuant to Section 4.100-3 of Revenue Regulations No. 7-95, approved effective April 12, 1998.[1]

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). Respondent holds office at

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[1] Pars. 1 and 2, Summary of Facts Admitted, Consolidated Stipulation of Facts and Issues (CSFI), Docket, p. 44

the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

Petitioner filed its original VAT Return for the fourth quarter of 2006 on January 23, 2007. Petitioner filed an Amended Return on June 20, 2008, which reflected total zero-rated sales of P2,709,703,123.71, importation of goods in the amount of P174,836,441.67 with input tax of P20,980,373.00, and purchases of services of P478,859.92 with input tax of P57,463.19.[2]

Petitioner filed its original VAT Return for the first quarter of 2007 on April 24, 2007. Petitioner then filed an Amended Return on June 20, 2008, which reflected total zero-rated sales of P2,672,732,942.84, importation of goods amounting to P195,424,758.14 with input tax of P23,450,971.00, and purchase of services of P1,232,383.92 with input tax of P147,886.07.[3]

Pursuant to Section 4.112-1 of Revenue Regulations No. 16-2005, petitioner filed its claim for refund/tax credit with the One-Stop-Shop Center of the Department of Finance on September 24, 2008, per Application No. 54766 in the amount of P21,037,836.19 for the fourth

[2] Exhibits "B" and "B-1"
[3] Exhibits "C" and "C-1"

quarter of 2006, and per Application No. 54765 in the amount of P23,598,857.07 for the first quarter of 2007.[4]

Since respondent did not act on petitioner's claim for refund or tax credit, petitioner filed before this Court the present Petitions for Review docketed as CTA Case Nos. 7859 and 7886 filed on January 9, 2009 and March 26, 2009, respectively.

On February 4, 2009, respondent filed his Answer[5] in CTA Case No. 7859, interposing 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."

On May 4, 2009, respondent filed his Answer[6] in CTA Case No. 7886, raising the same special and affirmative defenses as those interposed in his Answer in CTA Case No. 7859.

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[4] Par. 5, Summary of Facts Admitted, CSFI, Docket, p. 45
[5] CTA Case No. 7859, Docket, pp. 22-24
[6] CTA Case No. 7886, Docket, pp. 22-24

During the hearing held on June 4, 2009, petitioner's counsel verbally moved for the consolidation of CTA Case No. 7859 with CTA Case No. 7886, which are both pending before the Second Division of this Court. There being no objection from respondent's counsel, the Court granted the consolidation of the two cases.[7]

On June 10, 2009, the parties filed their "Consolidated Stipulation of Facts and Issues," which was approved in a Resolution[8] dated June 29, 2009. In the same Resolution, the pre-trial was terminated and the parties were ordered to proceed with the trial on the merits.

Petitioner filed its Formal Offer of Evidence[9] on December 18, 2009, offering Exhibits "A" to "O", inclusive of sub-markings.

During the hearing held on April 12, 2010, counsel for respondent manifested that he is submitting the case for decision based on the pleadings.[10] Respondent was then given thirty (30) days from April 12, 2010 or until May 12, 2010 to file his memorandum, while petitioner was given twenty (20) days from receipt of the Resolution to file its memorandum.[11]

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[7] Minutes of hearing, June 4, 2009, CTA Case No. 7859, Docket, p. 38
[8] Docket, p. 47
[9] Docket, pp. 90-95
[10] Minutes of hearing, April 12, 2010, Docket, p. 102
[11] Resolution dated April 12, 2010, Docket, p. 104

On June 17, 2010, the case was ordered submitted for decision after petitioner submitted its Memorandum on April 29, 2010, *sans* respondent's Memorandum.

The jointly stipulated issues[12] submitted by the parties are as follows:

> "1. Whether or not Petitioner's domestic purchases and importation of goods which are attributable to its export sales for the 4th quarter of 2006, and 1st quarter of 2007, are duly supported by documentary evidence.
>
> 2. Whether Petitioner made direct exports of mineral products during the same periods.
>
> 3. Whether or not the accumulated or excess input VAT was not utilized or applied by Petitioner against output VAT in the 4th quarter of 2006 and in the 1st quarter of 2007, 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 P21,037,836.19 for the 4th quarter of 2006 and P23,598,857.07 for the 1st quarter of 2007 paid for the purchase of goods and services due to Petitioner being a producer and exporter of mineral products."

In these consolidated cases, petitioner seeks the refund or issuance of tax credit certificate of its unutilized input VAT paid on

[12] Docket, p. 46

purchases of goods and services attributable to its zero-rated sales for the fourth quarter of 2006 and the first quarter of 2007, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
7859	Fourth Quarter 2006	P21,037,836.19
7886	First Quarter 2007	P23,598,857.07
	TOTAL	P44,636,693.26

Petitioner anchors its claim on Section 112(A) of the 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." *(Emphasis supplied)*

Thus, petitioner must comply with the following requisites to be entitled to a refund or tax credit of input tax:

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

However, this Court finds it appropriate to determine first the timeliness of the filing of the two (2) petitions.

In the case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[13], the Supreme Court) declared that 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, is reckoned from the close of the taxable quarter when the relevant sales were made, regardless of whether said tax was paid or not.

In the instant consolidated cases, petitioner claims for the refund of its unutilized input VAT for the fourth quarter of 2006 and the first quarter of 2007. Counting from the close of the fourth quarter of 2006 on December 31, 2006, and the close of the first quarter of 2007 on March 31, 2007, petitioner had until December 31, 2008 and March 31, 2009, respectively, within which to file its claim for refund.

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[13] G.R. No. 172129, September 12, 2008

A perusal of the records reveals that petitioner's administrative claims for refund of its unutilized input VAT incurred during the fourth quarter of 2006 and the first quarter of 2007 were both filed on September 24, 2008. Thus, petitioner's administrative claims for refund or issuance of tax credit certificate were filed on time.

However, notwithstanding the timely filing of petitioner's administrative claims, this Court has no jurisdiction over the two (2) Petitions for Review filed by petitioner on January 9, 2009 and March 26, 2009.

In the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[14], the Supreme Court had the occasion to discuss the relevance of Section 112(D) of the NIRC of 1997 to the filing of judicial claim for refund and the effect in case of its violation, to wit:

> "(T)o be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.
>
> xxx xxx xxx
>
> Bearing this in mind, we shall now proceed to determine whether the administrative claim was timely filed.
>
> xxx xxx xxx
>
> Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.

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[14] G.R. No. 184823, October 6, 2010

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There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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.' **The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D)** of the NIRC **envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**

xxx xxx xxx

In fine, **the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.**" *(Emphasis supplied)*

Based on the afore-quoted ruling, the two-year prescriptive period for filing of claim for a refund applies only to the administrative claim and the applicable provision in determining the prescriptive period for the filing of a judicial claim is Section 112(D) of the NIRC of 1997.

Also, respondent has 120 days from the submission of the complete documents supporting petitioner's claim within which to decide on the said claim. In case of denial or inaction of respondent, petitioner then has thirty days within which to file an appeal before this Court.

In the instant consolidated cases, both administrative claims were filed on September 24, 2008, but the judicial claim for refund of the unutilized input VAT for the fourth quarter of 2006 was filed on January 9, 2009, while the judicial claim for refund of the unutilized input VAT for the first quarter of 2007 was filed on March 26, 2009.

Applying the foregoing ruling to the instant consolidated cases, counting 120 days from the filing of the administrative claims on September 24, 2008, respondent had until January 22, 2009 within which to decide. From January 22, 2009, petitioner had 30 days or until February 23, 2009, the next working day, since February 21, 2009 fell on a Saturday[15], to appeal before this Court in accordance with Section 112(D) of the NIRC of 1997.

[15] Section 1, Rule 22 of the Rules of Court

Considering that petitioner filed its judicial claim for refund of its unutilized input VAT for the fourth quarter of 2006 on January 9, 2009, the said judicial claim was prematurely filed.

As to petitioner's judicial claim for refund of its unutilized input VAT for the first quarter of 2007 filed on March 26, 2009, the same was filed beyond the 30-day reglementary period provided by law.

Consequently, the Court now deems it unnecessary to determine petitioner's compliance with the other requisites pertinent to its refund claim, and the merits of the instant Petitions for Review will no longer be subject to this Court's further evaluation.

WHEREFORE, the instant consolidated Petitions for Review are hereby **DISMISSED** for lack of jurisdiction, considering that CTA Case No. 7859 was prematurely filed and CTA Case No. 7886 was filed out of time.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
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.

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's Division.

ERNESTO D. ACOSTA
Presiding Justice