REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NOS. 7933 & 7968**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 2 1 2015

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4:20 p.m.

AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For resolution of this Court is petitioner's "**Motion for Reconsideration (Re: Decision Rendered on September 22, 2014)**" filed on October 7, 2014, with respondent's "**Comment**" filed on October 22, 2014.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**"

Petitioner asserts in its motion that it submitted the following documents: (1) certificates of inward remittances issued by local banks through which the remittance of the net foreign exchange proceeds of petitioner's export sales of its mineral products were coursed; and (2) bank passbooks showing the crediting of the net foreign exchange remittances to the bank accounts of petitioner.

Likewise, petitioner avers that the remittances covered by the bank certifications[1] and by the corresponding entries in the passbooks[2] actually pertained to the zero-rated sales of petitioner for the periods covered by the present claim. Petitioner points out that it can further be determined by analyzing the bank certifications in relation to the Provisional/Final Sales Invoices, as summarized in the Schedule of Sales and Remittances in the Independent CPA Report.

In her Comment, respondent counter-argues that petitioner failed to comply with the third requisite of Revenue Regulations (RR) No. 16-2005. In other words, petitioner failed to submit the relevant documents necessary to substantiate its claim for refund of its unutilized excess input VAT attributable to its zero-rated sales for the second and third quarters of 2007.

In support of its motion, petitioner illustrates an example to prove that the remittances it received actually pertain to the zero-rated sales for the period covered by the present claim, to wit:

> "First is Exhibit 'F-1', the Certification issued by BDO (formerly Equitable PCIB) that covered Pan Pacific's remittances during the 2nd quarter of 2007 that were coursed through said bank. One remittance was on 06/08/07 in the amount of US$13,975,805.87 (rounded to 13,975,806), and the other was on 05/10/07 in the amount of US$3,745,530.83 (rounded to 3,745,531). The remittance of US$13,975,806 on 06/08/07 is shown in the Schedule of Sales and Remittance, Exhibit 'F', second line under the column 'Remittances – Net'. If we look towards the left part of the Schedule, we note that it is covered by Provisional Invoice No. 2503, dated May 29, 2007 (Exhibit 'E-2-b') which shows the provisional Export Sales-Net of US$15,918,565. However, under the Long Term Sales Agreement (Exhibit 'C'), only 90% (US$14,326,708) is initially due and payable. Thus, from the export sales of US$15,918,565 as shown in Provisional Invoice No. 2503, dated May 29, 2007 (Exhibit 'E-2-b'), deducted is 10% thereof, or US$1,591,857 (which is reflected in the Schedule of Sales and Remittances, Exhibit "F", under the column 'Receivables

[1]Exhibits "F-1" to "F-11"
[2]Exhibits "F-1-a" to "F-11-a"

– 2nd Q 2007'). Also deducted is the treatment charge in the amount of US$350,872, leaving a balance of US$13,975,837. The net remittance was US$13,975,806 after deducting the bank charge of US$31 (shown in the column 'Remittance – Deduct' in the Schedule of Sales and Remittances', Exhibit 'F').

The second remittance covered by Exhibit 'F-1' is the amount of US$3,745,531 on 5/10/07. This is reflected in line 7 under the column 'Remittances – Net' of Exhibit 'F'. If we look towards the left part of Exhibit 'F', we note that it is covered by Final Invoice No. 2500, Exhibit 'E-8-c'. Examining this Final Invoice No. 2500, we find that it reflects the 'Final Balance Due Philex' in the amount of US$3,745,562. However, after deducting the bank charge of US$31, the net remittance was US$3,745,531.xxx"[3]

After careful re-evaluationof the foregoing arguments, the Court finds petitioner's arguments meritorious.

Based on petitioner's Schedule of Export Sales and the supporting Provisional and Final Invoices, the zero-rated sales in the amount of US$72,171,652.00 and US$72,666,701.00 for the second and third quarters of 2007 may be broken down as follows:

Second Quarter of 2007							
Provisional Invoice				**Final Invoice**			**Amount Recorded in the General Ledger (in US$)**
Exhibit	**Inv. No.**	**Amount (in US$)**	**90% Provisional Drawing (in US$)**	**Exhibit**	**Inv. No.**	**Amount (in US$)**	
Current Quarter's Shipments							
E-1-b	2501	16,740,281.56	15,066,253.40	E-1-c	2510	16,645,029.37	17,446,779.00
E-2-b	2503	15,918,565.41	14,326,708.87	E-2-c	2513	16,384,343.89	16,938,439.00
E-3-b	2505	15,266,237.96	13,739,614.16	E-3-c	2514	15,657,431.65	16,261,006.00
E-4-b	2506	15,470,215.27	13,923,193.74	E-4-c	2516	15,897,767.70	16,475,683.00
subtotal		**63,395,300.20**				**64,584,572.61**	**67,121,907.00**
Catch-up Adjustments to Prior Quarter's Shipments							
E-5-b	2487	12,809,339.17	11,528,405.25	E-5-c	2498	12,132,342.27	(360,557.00)
E-6-b	2490	13,571,696.17	12,214,526.55	E-6-c	2499	12,528,933.65	(466,740.00)
E-7-b	2491	11,563,407.65	10,407,066.89	E-7-c	2502	12,433,383.79	798,959.00
E-8-b	2492	11,654,140.06	10,488,726.05	E-8-c	2500	14,234,287.88	2,433,690.00
E-9-b	2495	12,159,517.41	10,943,565.67	E-9-c	2504	14,512,805.59	2,644,393.00
E-10-b	2496	13,203,397.70	11,883,057.93	E-10-c	2507	15,022,988.88	-
subtotal		**74,961,498.16**				**80,864,742.06**	**5,049,745.00**

[3]Motion for Reconsideration (Re: Decision Rendered on September 22, 2014), docket, p. 371

Total	**138,356,798.36**		**145,449,314.67**	**72,171,652.00**

Third Quarter of 2007							
Provisional Invoice				**Final Invoice**			**Amount Recorded in the General Ledger (in US$)**
Exhibit	**Inv. No.**	**Amount (in US$)**	**90% Provisional Drawing (in US$)**	**Exhibit**	**Inv. No.**	**Amount (in US$)**	
Current Quarter's Shipments							
E-11-b	2508	15,583,711.76	14,025,340.58	E-11-c	2519	15,295,779.00	16,925,092.00
E-12-b	2509	14,579,004.85	13,121,104.37	E-12-c	2552	15,181,640.93	16,150,350.00
E-13-b	2511	15,315,307.64	13,783,776.88	E-13-c	2523	16,190,437.47	16,997,223.00
E-14-b	2512	16,074,535.85	14,467,082.27	E-14-c	2525	16,192,708.23	17,095,371.00
subtotal		**61,552,560.10**				**62,860,565.63**	**67,168,035.00**
Catch-up Adjustments to Prior Quarter's Shipments							
E-15-b	2496	13,203,397.70	11,883,057.93	E-15-c	2507	15,022,988.88	2,056,691.00
E-16-b	2497	13,451,691.12	12,106,522.01	E-16-c	2515	14,758,882.27	1,561,637.00
E-17-b	2501	16,740,281.56	15,066,253.40	E-17-c	2510	16,645,029.37	214,722.00
E-18-b	2503	15,918,565.41	14,326,708.87	E-18-c	2513	16,384,343.89	446,412.00
E-19-b	2505	15,266,237.96	13,739,614.16	E-19-c	2514	15,657,431.65	740,222.00
E-20-b	2506	15,470,215.27	13,923,193.74	E-20-c	2516	15,897,767.70	478,982.00
subtotal		**90,050,389.02**				**94,366,443.76**	**5,498,666.00**
Total		**151,602,949.12**				**157,227,009.39**	**72,666,701.00**

Based on the Schedule of Sales and Remittances[4] together with the foregoing explanation of petitioner, ninety percent (90%) of the export sales per Provisional Invoices for the second and third quarters of 2007 shipments, after deducting the alleged treatment charges, corresponds to the inward remittances received by petitioner. However, for Provisional Invoice Nos. 2511 and 2512 with Final Invoice Nos. 2523 and 2525, respectively, no inward remittance has been received. Thus, the same remained as collectible or receivable at the end of the third quarter of 2007.

It is noteworthy that petitioner did not submit any documentary evidence to support its alleged treatment charges and that the remaining receivables were subsequently collected and accounted for in acceptable foreign currency. Hence these items shall be disregarded in computing the correct amount of petitioner's zero-rated sales.

Out of the 90% Provisional Drawing in the total amount of US$112,453,074.27 for the second and third quarter's shipments,

[4] Exhibit "F"

only the amount of US$82,099,483.00 had the corresponding inward remittance, computed as follows:

Current Quarter's Shipments (in US$)					
Provisional Invoice No.	**Final Invoice No.**	**Amount Recorded in the General Ledger**	**90% Provisional Drawing**	**Actual Remittance per Bank Certificates**	**Difference**
Second Quarter of 2007					
2501	2510	17,446,779.00	15,066,253.40	14,715,969.00	350,284.40
2503	2513	16,938,439.00	14,326,708.87	13,975,806.00	350,902.87
2505	2514	16,261,006.00	13,739,614.16	13,391,401.00	348,213.16
2506	2516	16,475,683.00	13,923,193.74	13,574,300.00	348,893.74
	subtotal	**67,121,907.00**	**57,055,770.17**	**55,657,476.00**	**1,398,294.17**
Third Quarter of 2007					
2508	2519	16,925,092.00	14,025,340.58	13,675,738.00	349,602.58
2509	2552	16,150,350.00	13,121,104.37	12,766,269.00	354,835.37
2511	2523	16,997,223.00	13,783,776.88	-	13,783,776.88
2512	2525	17,095,371.00	14,467,082.27	-	14,467,082.27
	subtotal	**67,168,036.00**	**55,397,304.10**	**26,442,007.00**	**28,955,297.10**
Total		**134,289,942.00**	**112,453,074.27**	**82,099,483.00**	**30,353,591.27**

With regard to the Catch-up Adjustments to Prior Quarter's Shipments for the second and third quarters of 2007, only the payments for Provisional Invoice Nos. 2487, 2490, 2491, 2492, 2495, 2497, 2496 and 2501 with the respective Final Invoice Nos. 2498, 2499, 2502, 2500, 2504, 2515, 2507 and 2510, were inwardly remitted. For the Catch-up Adjustments pertaining to Provisional Invoice Nos. 2503, 2505 and 2506, with Final Invoice Nos. 2513, 2514 and 2516, respectively, no corresponding inward remittances were made.Thus:

Catch-up Adjustments to Prior Quarter's Shipments (in US$)						
Prov. Inv. No.	**Final Inv. No.**	**Amount Recorded in the General Ledger**	**Amount per Final Invoice (a)**	**90% Provisional Drawing (b)**	**Balance - should be remittance (a-b)**	**Actual Remittance**
Second Quarter of 2007						
2487	2498	(360,557.00)	12,132,342.27	11,528,405.25	603,937.02	603,900.00
2490	2499	(466,740.00)	12,528,933.65	12,214,526.55	314,407.10	314,407.00
2491	2502	798,959.00	12,433,383.79	10,407,066.89	2,026,316.90	2,026,317.00
2492	2500	2,433,690.00	14,234,287.88	10,488,726.05	3,745,561.83	3,745,531.00
2495	2504	2,644,393.00	14,512,805.59	10,943,565.67	3,569,239.92	3,569,215.00
2497	2515	-	-	-	-	12,106,475.00
	subtotal	5,049,745.00	65,841,753.18	55,582,290.41	10,259,462.77	22,365,845.00
Third Quarter of 2007						
2496	2507	2,056,691.00	15,022,988.88	11,883,057.93	3,139,930.95	3,139,909.00
2497	2515	1,561,637.00	14,758,882.27	12,106,522.01	2,652,360.26	-

2501	2510	214,722.00	16,645,029.37	15,066,253.40	1,578,775.97	1,578,776.00
2503	2513	446,412.00	16,384,343.89	14,326,708.87	2,057,635.02	-
2505	2514	740,222.00	15,657,431.65	13,739,614.16	1,917,817.49	-
2506	2516	478,982.00	15,897,767.70	13,923,193.74	1,974,573.96	-
subtotal		5,498,666.00	94,366,443.76	81,045,350.11	13,321,092.65	4,718,685.00
Total		**10,548,411.00**	**160,208,196.94**	**136,627,640.52**	**23,580,556.42**	**27,084,530.00**

Consequently, the amount of US$52,492,021.00, representing the difference between export sales as recorded in the General Ledger and the corresponding inward remittances for the second and third quarters' shipments, shall be disallowed as zero-rated sales, as determined below:

		Amount Recorded in the General Ledger (in US$)			Inward Remittance (in US$)			Difference
Prov. Inv. No.	Final Inv. No.	Current Quarter	After the Current Quarter (Catch-up Adjustment)	Total	Current Quarter	After the Current Quarter	Total	Difference
Current Quarter's Shipments								
Second Quarter of 200								
2501	2510	17,446,779.00	214,722.00	17,661,501.00	14,715,969.00	1,578,776.00	16,294,745.00	1,366,756.00
2503	2513	16,938,439.00	446,412.00	17,384,851.00	13,975,806.00	-	13,975,806.00	3,409,045.00
2505	2514	16,261,006.00	740,222.00	17,001,228.00	13,391,401.00	-	13,391,401.00	3,609,827.00
2506	2516	16,475,683.00	478,982.00	16,954,665.00	-	13,574,300.00	13,574,300.00	3,380,365.00
subtotal		67,121,907.00	1,880,338.00	**69,002,245.00**	42,083,176.00	15,153,076.00	**57,236,252.00**	**11,765,993.00**
Third Quarter of 2007								
2508	2519	16,925,092.00	-	16,925,092.00	13,675,738.00	-	13,675,738.00	3,249,354.00
2509	2552	16,150,350.00	-	16,150,350.00	12,766,269.00	-	12,766,269.00	3,384,081.00
2511	2523	16,997,223.00	-	16,997,223.00	-	-	-	16,997,223.00
2512	2525	17,095,371.00	-	17,095,371.00	-	-	-	17,095,371.00
subtotal		67,168,035.00	-	**67,168,035.00**	26,442,006.00	-	**26,442,006.00**	**40,726,028.00**
Catch-up Adjustments to Prior Quarter's Shipments								
Second Quarter of 2007								
2487	2498	(360,557.00)	-	(360,557.00)	603,900.00	-	603,900.00	-
2490	2499	(466,740.00)	-	(466,740.00)	314,407.00	-	314,407.00	-
2491	2502	798,959.00	-	798,959.00	2,026,317.00	-	2,026,317.00	-
2492	2500	2,433,690.00	-	2,433,690.00	3,745,531.00	-	3,745,531.00	-
2495	2504	2,644,393.00	-	2,644,393.00	3,569,215.00	-	3,569,215.00	-
subtotal		5,049,745.00	-	5,049,745.00	10,259,370.00	-	10,259,370.00	-
Third Quarter of 2007								
2497	2515	1,561,637.00	-	1,561,637.00	12,106,475.00	-	12,106,475.00	-
2496	2507	2,056,691.00	-	2,056,691.00	3,139,909.00	-	3,139,909.00	-
subtotal		3,618,328.00	-	3,618,328.00	15,246,384.00	-	15,246,384.00	-
TOTAL		142,958,015.00	1,880,338.00	**144,838,353.00**	94,030,936.00	15,153,076.00	**109,184,013.00**	**52,492,021.00**

Accordingly, petitioner's export sales for the second and third quarters of 2007 with the net adjusted amount of US$60,405,659.00 *gr* and US$31,940,673.00, respectively, qualify for VAT zero-rating. The said amounts are computed below:

	2nd Quarter	3rd Quarter	Total
Zero-rated Sales	US$ 72,171,652.00	US$ 72,666,701.00	US$144,838,353.00
Less: Sales without corresponding inward remittance	11,765,993.00	40,726,028.00	52,492,021.00
Adjusted Zero-rated Sales	**US$60,405,659.00**	**US$31,940,673.00**	**US$ 92,346,332.00**

After resolving that petitioner had VAT zero-rated sales for the second and third quarters of 2007 in the total amount of US$92,346,332.00, the Court proceeds to determine whether petitioner incurred or paid input taxes in connection thereto and if said input taxes were not applied against any output VAT liability of petitioner.

Petitioner's Quarterly VAT Return for the second and third quarters of 2007 reflected an input VAT of ₱38,298,976.00 on importations of goods other than capital goods, ₱1,084,497.72 on domestic purchase of goods other than capital goods and ₱875,526.89 on domestic purchases of services or in the total input VAT amount of ₱40,259,000.61, as shown below:

Input VAT on	2nd Quarter	3rd Quarter	Total
Importations of Goods (other than Capital Goods)	₱ 17,986,209.00	₱ 20,312,767.00	₱ 38,298,976.00
Domestic Purchases Goods (other than Capital Goods)	-	1,084,497.72	1,084,497.72
Domestic Purchases Services	426,113.93	449,412.96	875,526.89
Total Input VAT	**₱ 18,412,322.93**	**₱ 21,846,677.68**	**₱ 40,259,000.61**

To determine the accuracy of petitioner's declaration, the Independent CPA examined the voluminous documents of petitioner in support of its claim for refund.In her Report, the Independent CPAfound the following:

Findings	Exhibit	2nd Quarter	3rd Quarter	Total
A. Input VAT on Importations of Goods (other than Capital Goods)				
1. Supported by original BCORs/BDAs and IEIRDs				
a) Dated in the current quarter	"G-1" to "G-26-a"	₱ 3,753,399.00	₱ 10,863,184.00	₱ 14,616,583.00
b) Not dated within the taxable quarter but within the taxable year				
Second quarter of 2007	"G-27" to "G-27-a"	-	300,976.00	300,976.00
Fourth quarter of 2007	"G-28" to "G-28-a"	-	1,030,052.00	1,030,052.00

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2. Supported by original BCORs/BDAs and photocopies of IEIRDs	"H-1" to "H-26"	2,701,847.00	434,757.00	3,136,604.00
3. No supporting BDAs, BCORs and IEIRDs	"I"	11,530,963.00	7,683,798.00	19,214,761.00
Subtotal		**17,986,209.00**	**20,312,767.00**	**38,298,976.00**
B. Input VAT on Domestic Purchases of Goods (other than Capital Goods)				
1. Original VAT invoices that are in the name of petitioner				
a) Dated in the current quarter	"L-1" to "L-6"	-	718,551.72	718,551.72
b) Not dated within the taxable quarter but within the taxable year				
First quarter of 2007	"L-7"	-	93,278.57	93,278.57
Second quarter of 2007	"L-8" to "L-10"	-	254,565.25	254,565.25
2. No supporting VAT invoices	"M"	-	18,102.18	18,102.18
Subtotal		**-**	**1,084,497.72**	**1,084,497.72**
C. Input VAT on Domestic Purchases of Services				
1. Original VAT official receipts that are in the name of petitioner				
a) Dated in the current quarter	"J-1" to "J-53"; "J-96" to "J-151"	26,902.30	371,371.55	398,273.85
b) Not dated within the taxable quarter but within the taxable year				
Fourth quarter of 2006	"J-54"	120.36	-	120.36
First quarter of 2007	"J-55" to "J-95"	279,507.68	-	279,507.68
Second quarter of 2007	"J-152" to "J-178"	-	34,167.48	34,167.48
2. No supporting VAT official Receipts	"K"	119,583.59	43,873.93	163,457.52
Subtotal		**426,113.93**	**449,412.96**	**875,526.89**
Total Input VAT		**₱18,412,322.93**	**₱21,846,677.68**	**₱40,259,000.61**

Based on the above findings, petitioner's claim in the amount of ₱23,891,001.31 shall be disallowed for the reasons stated below:

Findings	Exhibit	2nd Quarter	3rd Quarter	Total
A. Input VAT on Importations of Goods (other than Capital Goods)				
1. Supported by original BCORs/BDAs and IEIRDs				
Not dated within the period of claim - Fourth quarter of 2007	"G-28" to "G-28-a"		₱1,030,052.00	₱ 1,030,052.00
2. Supported by original BDAs only	"H-1" to "H-26"[5]	₱ 2,656,965.00	434,757.00	3,091,722.00
3. No supporting BDAs,	"I"	11,530,963.00	7,683,798.00	19,214,761.00

[5] Except Exhibits "H-16" to "H-18"

BCORs and IEIRDs				
Subtotal		**14,187,928.00**	**9,148,607.00**	**23,336,535.00**
B. Input VAT on Domestic Purchases of Goods (other than Capital Goods)				
1. Original VAT invoices that are in the name of petitioner				
Not dated within the period of claim - First quarter of 2007	"L-7"		93,278.57	93,278.57
2. No supporting VAT invoices	"M"		18,102.18	18,102.18
Subtotal			**111,380.75**	**111,380.75**
C. Input VAT on Domestic Purchases of Services				
1. Original VAT invoices that are in the name of petitioner				
Not dated within the period of claim				
Fourth quarter of 2006	"J-54"	120.36	-	120.36
First quarter of 2007	"J-55" to "J-95"	279,507.68	-	279,507.68
2. No supporting VAT official receipts	"K"	119,583.59	43,873.93	163,457.52
Subtotal		**399,211.63**	**43,873.93**	**443,085.56**
Total Input VAT		**₱ 14,587,139.63**	**₱9,303,861.68**	**₱23,891,001.31**

Upon further review of the Independent CPA's Report, together with petitioner's supporting documents, the Court finds that the input taxes in the amount of ₱475,407.10 should be disallowed from petitioner's claim due to its failure to substantiate the same by VAT invoices or receipts as prescribed under Sections 110(A), 113(A) and (B), 237 and 238 of the National Internal Revenue Code of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05, as amended. Below is the breakdown of the input taxes of ₱475,407.10:

Findings	Exhibit	2nd Quarter	3rd Quarter	Total
A. Input VAT on Domestic Purchases of Goods (other than Capital Goods)				
1. Supported by VAT Invoices but no BIR Authority to print				
Mining and Petroleum Services Corp.	"L-1"	-	46,743.56	46,743.56
Mining and Petroleum Services Corp.	"L-9"	-	64,287.85	64,287.85
Subtotal		-	**111,031.41**	**111,031.41**
B. Input VAT on Domestic Purchases of Services				
1. Input VAT supported by documents with noted alternations or additions in the supporting official receipt without countersignature of authorized representative of the supplier.				
Ocean Link Container Terminal Center	"J-1"	855.00	-	855.00
Asiaworld Transport Phils. Co. Inc.	"J-2"	350.83	-	350.83
RCF Integrated Services Inc.	"J-3"	478.38	-	478.38
CNT Air Express Inc.	"J-6"	120.00	-	120.00
Sky Freight Forwarders Inc.	"J-10"	108.00	-	108.00
Intertraffic Transport Corp.	"J-12"	120.00	-	120.00

DHL Express (Phils) Corp.	"J-16"	34.80	-	34.80
Macnels Shipping (Phils) Inc.	"J-20"	908.54	-	908.54
Hankyu Int'l Transport Phils Inc.	"J-23"	108.00	-	108.00
Nissin Transport Phils Corp.	"J-24"	107.14	-	107.14
The Enterprise Warehousing Corp.	"J-26"	479.42	-	479.42
Macnels Shipping (Phils) Inc.	"J-27"	240.00	-	240.00
Sky Freight Forwarders Inc.	"J-28"	108.00	-	108.00
Freight Connection Phils Inc.	"J-31"	288.66	-	288.66
Wingspeed Shipping Corp.	"J-34"	312.00	-	312.00
Orient Freight Int'l Inc.	"J-41"	1,670.69	-	1,670.69
Jaecub Cargo Surveying Services	"J-44"	722.99	-	722.99
Safeway Warehousing Inc.	"J-48"	120.00	-	120.00
Olympus Int'l Forwarding Corp.	"J-96"	-	996.28	996.28
UTI (Global Logistics) Inc.	"J-98"	-	144.00	144.00
Negros Navigation Co. Inc.	"J-111"	-	2,828.48	2,828.48
Crowne Plaza Galleria Manila	"J-112"	-	22,909.20	22,909.20
Mercury Freight Int'l Inc.	"J-115"	-	799.50	799.50
Asiaworld Transport Phils. Co. Inc.	"J-117"	-	684.48	684.48
Worldwide Seafreight Agency Inc.	"J-119"	-	812.78	812.78
Fritz Logistics Philippines, Inc.	"J-132"	-	344.52	344.52
Macnels Shipping (Phils) Inc.	"J-133"	-	1,393.06	1,393.06
Asiaworld Transport Phils. Co. Inc.	"J-138"	-	473.20	473.20
Negros Navigation Co. Inc.	"J-142"	-	3,474.50	3,474.50
United Phils Drilling Co. Inc.	"J-145"	-	174,588.84	174,588.84
Philippine World Travel Inc.	"J-149"	-	1,302.52	1,302.52
United Phils Drilling Co. Inc.	"J-151"	-	131,116.08	131,116.08
ATI Batangas Inc.	"J-152"	-	527.54	527.54
Asiaworld Transport Phils. Co. Inc.	"J-153"	-	327.07	327.07
Famous Pacific Forwarding Phils Inc.	"J-154"	-	390.00	390.00
Macnels Shipping (Phils) Inc.	"J-158"	-	1,388.93	1,388.93
Con-Pac Warehousing Inc.	"J-159"	-	848.91	848.91
Asiaworld Transport Phils. Co. Inc.	"J-163"	-	426.07	426.07
Asiaworld Transport Phils. Co. Inc.	"J-164"	-	797.03	797.03
Seahawk Transport Inc.	"J-166"	-	1,151.12	1,151.12
Jolly-B Box Express Line Inc.	"J-170"	-	709.20	709.20
Freight Mngt. Worldwide Services Inc.	"J-172"	-	318.00	318.00
8R Flanders CFS Inc.	"J-176"	-	537.28	537.28
2. Input VAT supported by VAT official receipt but VAT is not separately indicated				
Fritz Logistics Philippines, Inc.	"J-102"	-	108.00	108.00
3. Input VAT supported by document other than VAT official receipt				
Assoc. of Int'l Shipping Lines Inc.	"J-18"	16.07	-	16.07
Assoc. of Int'l Shipping Lines Inc.	"J-29"	24.11	-	24.11
Assoc. of Int'l Shipping Lines Inc.	"J-101"	-	2.68	2.68
Asian Terminals, Incorporated	"J-103"	-	1,601.93	1,601.93
Asian Terminals, Incorporated	"J-104"	-	57.76	57.76
Asian Terminals, Incorporated	"J-105"	-	231.02	231.02
Asian Terminals, Incorporated	"J-108"	-	400.48	400.48
Asian Terminals, Incorporated	"J-109"	-	144.39	144.39
Assoc. of Int'l Shipping Lines Inc.	"J-110"	-	2.68	2.68

Assoc. of Int'l Shipping Lines Inc.	"J-135"	-	16.07	16.07
Assoc. of Int'l Shipping Lines Inc.	"J-143"	-	18.75	18.75
Asian Terminals, Incorporated	"J-157"	-	2,243.30	2,243.30
Assoc. of Int'l Shipping Lines Inc.	"J-161"	-	1,080.00	1,080.00
Miascor Logistics Corporation	"J-173"	-	80.04	80.04
Asian Terminals, Incorporated	"J-174"	-	1,927.37	1,927.37
Subtotal		**7,172.63**	**357,203.06**	**364,375.69**
Total Disallowance per this Court's Findings		**₱ 7,172.63**	**₱468,234.47**	**₱475,407.10**

Out of petitioner's reported input VAT for the second and third quarters of 2007 in the amount of ₱40,259,000.61 only the amount of ₱19,540,776.16 represents petitioner's valid input tax for the second and third quarters of 2007, tabulated hereunder:

	2nd Quarter	3rd Quarter	Total
Input VAT Claimed	₱ 18,412,322.93	₱ 21,846,677.68	₱ 40,259,000.61
Less: Disallowances			
a) Based on the ICPA Report	14,587,139.63	9,303,861.68	23,891,001.31
b) Per this Court's findings	7,172.63	468,234.47	475,407.10
Valid Input VAT	**₱ 3,818,010.67**	**₱ 12,074,581.53**	**₱ 15,892,592.20**

However, a portion of the ₱15,892,592.20 input VAT shall be applied against petitioner's reported output VAT liability for the second and third quarters of 2007 in the amount of ₱1,561,527.38 and ₱3,214.29, respectively. As a result, for the second and third quarters of 2007, only the remaining input VAT of ₱14,327,850.53 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱6,659,685,264.73 (with US dollar equivalent of US$144,838,353.00) and only the input VAT of ₱7,194,587.11 is attributable to the valid zero-rated sales of ₱4,253,414,760.14 (with US dollar equivalent of US$92,346,332.00), as computed below:

	2nd Quarter	3rd Quarter	Total
Valid Input VAT	₱ 3,818,010.67	₱ 12,074,581.53	₱ 15,892,592.20
Less: Output VAT	1,561,527.38	3,214.29	1,564,741.67
Refundable Input VAT attributable to zero-rated sales	**₱ 2,256,483.29**	**₱ 12,071,367.24**	**₱ 14,327,850.53**
Multiply by: Allocation Factor *(Valid Zero-Rated Sales ÷ Total Zero-Rated Sales)*			
Total Zero-Rated Sales in Php	₱ 3,336,877,804.52	₱ 3,322,807,460.21	₱ 6,659,685,264.73
x Valid Zero-Rated Sales in US$	60,405,659.00	31,940,673.00	92,346,332.00
÷ Total Zero-Rated Sales in US$	72,171,652.00	72,666,701.00	144,838,353.00
= Valid Zero-Rated Sales in Php	**2,792,873,617.25**	**1,460,541,142.89**	**4,253,414,760.14**
Allocation Factor	83.6972098%	43.9550338%	

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Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱ 1,888,613.55**	**₱ 5,305,973.55**	**₱ 7,194,587.11**

While the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[6] from the fourth quarter of 2007 to the first quarter of 2009, the same remained unutilized since it was deducted in its Quarterly VAT Return for the second quarter of 2009, as "VAT Refund/TCC claimed"[7] from the total available input tax of ₱131,070,431.13[8]. In other words, the claimed input taxes for the second and third quarters of 2007 could not have been carried over or utilized in the succeeding third quarter of 2009.

In sum, the Court finds petitioner entitled to a refund in the reduced amount of ₱7,194,587.11, representing its unutilized excess input VAT attributable to its zero-rated sales for the second and third quarters of 2007.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund be issued in favor of Philex Mining Corporation in the amount of ₱7,194,587.11, representing its unutilized excess input VAT attributable to its zero-rated sales for the second and third quarters of 2007.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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

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[6]Exhibits "N-9" to "N-14"
[7]Exhibit "N-15(1/2)", line 23D
[8]Exhibit "N-7(1/2)", line 22

ATTESTATION

I attest that the conclusions in the above Amended 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 Amended 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