REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 8553 & 8562

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
MAR 31 2015
2:45 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

This case is a consolidation of two Petitions for Review separately filed by Philex Mining Corporation to seek the refund of the aggregate amount of ₱91,998,117.25, allegedly representing unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to zero-rated sales during the second and third quarters of 2010, broken down as follows:

CTA CASE NO.	PERIOD COVERED	AMOUNT OF CLAIM
8553	Second Quarter of 2010	₱ 41,715,585.49[1]
8562	Third Quarter of 2010	50,282,531.76[2]
TOTAL		**₱91,998,117.25**

FACTS

Philex Mining Corporation (petitioner) is a domestic corporation organized under Philippine laws, with principal office at 27 Brixton St. Pasig City. Petitioner is engaged in the

[1] Petition for Review, docket (CTA Case No. 8553), pp. 5-8.
[2] Petition for Review, docket (CTA Case No. 8562), pp. 7-10.

mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is a VAT-registered taxpayer with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987[3], and under Bureau of Internal Revenue (BIR) Form No. 2303 as of January 31, 1997. Petitioner also has a duly approved Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.[4]

The Commissioner of Internal Revenue (respondent) is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund and tax credit of taxes erroneously or illegally collected. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

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

Petitioner filed its Quarterly VAT Returns for the second and third quarters of 2010 on July 22, 2010 and on October 19, 2010, respectively. It subsequently amended the Quarterly VAT Return for the second quarter[7] on February 13, 2012 to reflect the total zero-rated sales of ₱2,452,792,258.64, VATable sales/receipts of ₱27,777,801.60 with output tax of ₱3,333,336.19, importation of goods of ₱271,292,991.67, with input tax of ₱32,555,159.00, and purchase of services of ₱104,114,689.00 with input tax of ₱12,493,762.68. It likewise amended the Quarterly VAT Return for the third quarter[8] of 2010 on February 13, 2012 to reflect the total zero-rated sales of ₱4,257,201,223.97, VATable sales/receipts of ₱9,848,767.09 with output tax of ₱1,181,852.05, importations of ₱250,068,525.00 with input tax of ₱30,008,223.00, and

[3] Annex "A", Petition for Review, docket (CTA Case No. 8553), p. 10; docket (CTA Case No. 8562), p12.
[4] Pars. 1 and 3, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), docket (CTA Case No. 8553), pp. 150-151.
[5] Exhibits "D" and "D-1".
[6] Exhibits "Q" and "Q-1".
[7] Exhibit "N-1".
[8] Exhibit "N-2".

purchase of services of ₱178,801,340.09 with input tax of ₱21,456,160.81.[9]

On June 7, 2012 and June 22, 2012, petitioner filed its claims for refund of the amounts of ₱45,048,921.68 and ₱51,464,383.81 for the second and third quarters of 2010, respectively, with the One-Stop Shop Center of the Department of Finance (DOF-OSS) per Claimant Information Sheet Nos. 62442 and 22002.[10] Petitioner also attached the letters both dated May 4, 2012 to the aforesaid claims, containing a list of supporting documents.[11]

Due to alleged inaction of respondent, petitioner filed two separate Petitions for Review on October 9, 2012 (CTA Case No. 8553) and on October 25, 2012 (CTA Case No. 8562).

In the Answer[12] filed on November 29, 2012 in CTA Case No. 8553, respondent interposed the following special and affirmative defenses:

> "4. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by the respondent;
>
> 5. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 6. Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with the following, viz:
>
> A. The registration requirements of a Value-Added taxpayer under the pertinent provision of the National Internal Revenue Code (NIRC) of 1997, as amended and its implementing revenue regulations;
>
> B. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the National Internal Revenue Code (NIRC) of 1997, as amended. Failure to comply with the invoicing requirements on the

---

[9] Pars. 4 and 5, Summary of Facts Admitted, SFI, docket (CTA Case No. 8553), p. 151.
[10] Exhibits "B", "B-1", "B-3", "C", "C-1", "C-3", "O-1", and "O-2".
[11] Exhibits "B-2", "B-2-a", "C-2", "C-2-a".
[12] Docket (CTA Case No. 8553), pp. 25-28.

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).

C. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax refund which is a condition sine qua non prior to the filing of such claim;

D. That the input taxes of ₱41,715,585.49 allegedly representing excess and unutilized input taxes for the 2nd Quarter of 2010, were:

1. Paid by petitioner;
2. Attributable to its zero-rated or effectively zero-rated sales; and
3. Such input taxes paid should not have been applied against any output tax.

E. The petitioner's claim for tax refund allegedly representing excess and unutilized input taxes for the 2nd Quarter of 2010 in the amount of ₱41,715,585.49 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 National Internal Revenue Code (NIRC) of 1997, as amended.

7. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims and of showing, by words too plain to be mistaken, that the legislature intended to exempt them;

8. And finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

On December 21, 2012, respondent filed her Answer[13] in CTA Case No. 8562, alleging the same special and affirmative defenses as stated in the Answer filed in CTA Case No. 8553 with the only difference of the amount of claim and period covered (*i.e.*, ₱50,282,531.76 for the 3rd Quarter of 2010) stated in subparagraphs D and E of paragraph 6.

Petitioner's two Pre-Trial Briefs for CTA Case Nos. 8553 and 8562 were both filed on January 9, 2013.[14]

On February 14, 2013, the Court granted the motion to consolidate the two cases and the motion to commission an Independent Certified Public Accountant (CPA) for the case.[15]

Petitioner submitted its Consolidated Pre-Trial Brief[16] on March 22, 2013; while respondent filed her Pre-Trial Brief[17] on May 2, 2013.

The parties submitted their Stipulation of Facts and Issues[18] on May 17, 2013. In the Pre-Trial Order[19] dated May 28, 2013, the Court approved the parties' stipulations and terminated the pre-trial. On June 21, 2013, the Pre-Trial Order[20] was amended.

During trial, petitioner presented Eileen C. Rodriguez and Albert G. Alba as its witnesses. On the other hand, respondent presented Ma. Cleofe T. Tasarra as her sole witness. The parties likewise presented their respective documentary evidence.

The case was submitted for decision on May 13, 2014,[21] considering petitioner's Memorandum[22] filed on February 25, 2014 and respondent's Memorandum[23] filed on May 6, 2014.

---

[13] Docket (CTA Case No. 8562), pp. 27-30.
[14] Docket (CTA Case No. 8553), pp. 30-34; docket (CTA Case No. 8562), pp. 32-36.
[15] Minutes of the Hearing dated February 14, 2013, docket (CTA Case No. 8553), p. 85.
[16] Docket (CTA Case No. 8553), pp. 138-145.
[17] Docket (CTA Case No. 8553), pp. 146-148.
[18] Docket (CTA Case No. 8553), pp. 150-156.
[19] Docket (CTA Case No. 8553), pp. 158-161.
[20] Amended Pre-Trial Order, docket (CTA Case No. 8553), pp. 165-168.
[21] Resolution (CTA Case No. 8553), p. 242.
[22] Docket (CTA Case No. 8553), pp. 206-222.
[23] Docket (CTA Case No. 8553), pp. 232-241.

ISSUE

The parties jointly stipulated and submitted to the Court for resolution the following issue[24]:

> "Whether or not Petitioner is entitled to the refund or tax credit of the alleged excess and unutilized input taxes in the total amounts of ₱45,048,921.68 and ₱51,464,383.81 for the 2nd and 3rd quarters of 2010, respectively, due to Petitioner being an exporter of mineral products."

RULING OF THE COURT

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."

---

[24] Statement of the Issues, SFI, docket, p. 151

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:

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.

This Court finds it appropriate to determine first petitioner's compliance with the fifth requisite pertaining to the timeliness of the filing of the instant claim, since it will determine the necessity of resolving petitioner's compliance with the other requisites.

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 second and third taxable quarters of 2010, which closed on June 30, 2010 and September 30, 2010, respectively. Counting two years from these dates, petitioner had until June 30, 2012 and September 30, 2012, within which to file its administrative claim for refund for the second and third quarters of 2010, respectively. Thus, petitioner's administrative claims for refund filed on June 7, 2012 and June 22, 2012 with the DOF-OSS under Claimant Information Sheet Nos. 62442[25] and 22002[26] for the amounts of ₱45,048,921.68 and ₱51,464,383.81, respectively, are well within the two-year prescriptive period prescribed under Section 112(A) of the NIRC of 1997, as amended.

[25] Exhibits "B" and "B-1".
[26] Exhibits "C" and "C-1".

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides as follows:

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

The above provision provides that the BIR Commissioner has 120 days from the date of submission of complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of full or partial denial by the BIR Commissioner, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the BIR Commissioner. However, if after the 120-day period the BIR Commissioner fails to act on the application for refund or tax credit, the remedy of the taxpayer is to appeal the inaction of the BIR Commissioner to this Court within 30 days.

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

CTA Case No.	Year 2010	Date of Filing Administrative Claim and Submission of Supporting Documents	End of 120 days for the BIR Commissioner to decide on the claim	End of 30 days from the expiration of the 120 days	Date of Filing of Judicial Claim
8553	2nd quarter	June 7, 2012[27]	October 5, 2012	November 4, 2012	October 9, 2012
8562	3rd quarter	June 22, 2012[28]	October 20, 2012	November 19, 2012	October 25, 2012

Based on the foregoing, the judicial claims were seasonably filed.

Notwithstanding, respondent contends that petitioner failed to prove that it complied with the submission of complete documents in support of its application for refund. It only presented the Claimant Information Sheet but without the checklist of the documents submitted or the acceptance of those documents. It cannot be presumed that these documents were submitted when petitioner filed its administrative claims. It is upon petitioner to prove compliance with this requirement and to justify it by words too plain to be mistaken and too categorical to be misinterpreted. In the absence of the complete documents, the 120-day period will not run. Therefore, the filing of the judicial action in the CTA is premature.[29]

The Court finds respondent's argument untenable.

The Manager of petitioner's Accounting Department, Ms. Eileen C. Rodriguez, in her Consolidated Judicial Affidavit[30], testified that petitioner indeed submitted supporting documents, *to wit*:

> "Q. No. 8. – Is there any other document that proves that supporting documents were submitted to the OSS upon the filing of Claim Information Sheet No. 62442 on June 7, 2012?
>
> A. No. 8. – Yes, sir. The OSS under the Dept. of Finance issued an Official Receipt evidencing payment of filing fee of ₱1,000 and processing fee of ₱150,000.
>
> xxx xxx xxx

---

[27] Exhibits "B", "B-1" and "B-2".
[28] Exhibits "C", "C-1" and "C-2".
[29] Respondent's Memorandum, docket (CTA Case No. 8553), p. 238.
[30] Exhibit "A".

Q. No. 10. – Why do you say that OR No. 0615555 proves that supporting documents were submitted to the OSS?

A. No. 10. – Philex has been filing quarterly claim for refund of excess input VAT for more than 10 years, and based on our experience the OSS does not accept the filing of a claim unless supporting documents are submitted, and it is only when supporting documents were submitted that the OSS accepts the payment for filing fee and processing fee for which they issue an OR.

xxx xxx xxx

Q. No. 12. – You also mentioned that documents in support of the claim were filed together with the claim. Was there a checklist enumerating a general description of the supporting documents that were filed?

A. No. 12. – Yes, sir. It is in the form of a letter addressed to the OSS, listing and describing the supporting documents submitted, which is an attachment to Claim Information Sheet No. 62442.

xxx xxx xxx

Q. No. 17. – Is there any other document that proves that supporting documents were submitted to the OSS upon the filing of Claim Information Sheet No. 22002 on June 22, 2012?

A. No. 17. – Yes, sir. The OSS under the Dept. of Finance issued an Official Receipt evidencing payment of filing fee of ₱1,000 and processing fee of ₱150,000.

xxx xxx xxx

Q. No. 19. – Why do you say that OR No. 0615664 proves that supporting documents were submitted to the OSS?

A. No. 19. – Philex has been filing quarterly claim for refund of excess input VAT for more than 10 years, and based on our experience the OSS does not accept the filing of a claim unless supporting documents are submitted, and it is only when supporting documents were submitted that the OSS accepts the payment for filing fee and processing fee for which they issue an OR."

Aside from the above testimony, petitioner, in two separate letters both dated May 4, 2012,[31] applied for refund of its input VAT paid during the second and third quarters of 2010 in the amounts of ₱45,048,921.68 and ₱51,464,383.81, respectively, composed of input tax from importation of taxable goods and input tax from purchases of taxable services. Enclosed with the said letters are the following:

a. Application for Tax Credit of Value Added Tax paid (BIR Form No. 2552) – (Folder No. 01);
b. Approved application for Zero rate (Photocopy) (Folder No. 01);
c. VAT Return for the second and third quarters of 2010 (Photocopy) BIR Form Nos. 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 (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);

[31] Exhibits "B-2" and "C-2".

r. Local purchases – Check Disbursement Register (CDR) (Folder No. 02); and
s. Purchases on importation (Folder No. 03).

The term "complete documents" under Section 112(C) of the NIRC of 1997 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.[32]

Further, since the records do not show that a written notice was sent by the BIR informing petitioner that the aforesaid documents are incomplete or requiring petitioner to submit additional documents, the 120-day period started to run without interruption from June 7, 2012 and June 22, 2012, the dates when petitioner filed its administrative claims together with the supporting documents. This is in consonance with Revenue Memorandum Circular (RMC) No. 029-09, which states that:

> III. *Period within which Refund or a Tax Credit of Input Taxes shall be Made*
>
> Section 112(C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
>
> a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
> b. That all books of accounts and accounting records pertaining to the claim are immediately available to

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

the concerned Revenue Officer (RO) for audit/verification;

c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and
d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, *i.e.*, failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer**. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request. *(Emphasis supplied)*

Evidently, petitioner timely filed its appeal via Petitions for Review on October 9, 2012 and October 25, 2012, as both were filed well within the 30-day period after the 120-day period ended.

The Court shall now proceed to determine petitioner's compliance with the remaining requisites provided under Section 112(A) of the NIRC of 1997, as amended.

Anent the first requisite, petitioner duly filed with the BIR its amended Quarterly VAT Returns for the second and third quarters of 2010, declaring, among others, the following:

	2nd Quarter (Exhibit "N-1")	**3rd Quarter** (Exhibit "N-2")
VATable Sales/Receipt	₱ 27,777,801.60	₱ 9,848,767.09
Zero Rated Sales/Receipts	2,452,792,258.63	4,257,201,223.97
Total Sales/Receipts	2,480,570,060.23	4,267,049,991.06
Output Tax Due	₱ 3,333,336.19	₱ 1,181,852.05

Less: Allowable Input Tax		
Input Tax Carried Over from Previous Quarter	229,611,748.51	233,245,621.93
Current Transactions		
Importations of Goods Other than Capital Goods	32,555,159.00	30,008,223.00
Domestic Purchase of Services	12,493,762.68	21,456,160.81
Total Input VAT from Current Transactions	*45,048,921.68*	*51,464,383.81*
Total Available Input Tax	274,660,670.19	284,710,005.74
Less: VAT Refund/TCC	38,081,712.07	-
Total Allowable Input Tax	236,578,958.12	284,710,005.74
Tax Still Payable/(Overpayment)	**(₱233,245,621.93)**	**(₱283,528,153.69)**

The Court-commissioned Independent CPA, Mr. Albert G. Alba, noted in his Consolidated Report dated March 13, 2013,[33] that petitioner's zero-rated sales for the second and third quarters of 2010 in the amounts of ₱2,452,792,258.63 and ₱4,257,201,223.97 have US dollar values of $54,158,665.00 and $94,909,000.00, respectively, consisting of the following:[34]

Particulars	2nd Quarter	3rd Quarter	Total
	(in US Dollar)		
Provisional billings for direct export sales			
Sales of Copper			
Pan Pacific Copper Co., Ltd.	-	95,821,967.00	95,821,967.00
Louis Dreyfus Commodities Metals Suisse	54,276,046.00	-	54,276,046.00
Sales of Gold			
Heraeus Ltd.	-	370,417.00	370,417.00
Subtotal	54,276,046.00	96,192,384.00	150,468,430.00
Adjustments to previous quarter's provisional billings			
Pan Pacific Copper Co., Ltd.	(91,477.00)	(215,333.00)	(306,810.00)
Louis Dreyfus Commodities Metals Suisse	(25,904.00)	(1,068,051.00)	(1,093,955.00)
Subtotal	(117,381.00)	(1,283,384.00)	(1,400,765.00)
	54,158,665.00	**94,909,000.00**	**149,067,665.00**

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.* –

[33] Exhibit "F".
[34] Exhibit "F", No. 2 of the Findings, page 2.

(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);"

Based on the above quoted provision, in order for an export sale to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following conditions must be present:

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

Corollary thereto, 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, prescribe that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, 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 invoices or receipts must be duly registered with the BIR as prescribed under Section 237 in relation to Section 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 the foregoing provisions of 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 RR No. 16-05, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:

1. the sales invoice as proof of sale of goods;
2. the 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 contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

The fact that petitioner is a VAT-registered is not disputed.[35] As evidenced by Export Declarations[36], Bills of Lading/Air Waybill[37], Provisional Invoices[38] and Final Invoices[39], petitioner indeed made sales and shipments of mineral products to Pan Pacific Copper Co., Ltd., Louise Dreyfus Commodities Metals Suisse SA and Heraeus Ltd. for the second and third quarter of taxable year 2010. The Bills of Lading specifically indicate that the port of discharge of copper concentrates shipments is Saganoseki, Japan while the Air Waybill indicates that the destination of gold bullion shipment is Hong Kong.

[35] Par. 3, Summary of Facts Admitted, SFI, docket (CTA Case No. 8553), p. 151.
[36] Exhibits "G-1" to "G-16".
[37] Exhibits "G-1-a" to "G-16-a".
[38] Exhibits "G-1-b" to "G-16-b".
[39] Exhibits "G-1-c" to "G-16-c".

However, as aptly observed by the ICPA, petitioner's export invoice (Provisional Invoice No. Pad-Aurex 117[40] and Final Invoice No. Pad-Aurex 117[41]) supporting the sales of gold to Heraeus Ltd. have no BIR authority to print. This logically leads to the conclusion that the said invoices were not duly registered with the BIR, in violation of Sections 113, 237 and 238 of the NIRC of 1997, as amended, and RR No. 16-05, as amended. Therefore, petitioner's sales to Heraeus Ltd. in the total amount of US$370,417.00 cannot be considered zero-rated sales.

The Court noted 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. However, petitioner explained that the reason for the much later dates of the final invoices is the fact that under the term of payment specified in Clause 9[42] of the contract between petitioner and the Japanese buyer, the final payment shall be made only upon seller's presentation to buyer of a final invoice based on the final settlement weights, assays and quotations. Under the same clause, the buyer shall make a provisional payment to seller upon shipment, for 90% of the estimated value based on shipped weights and assays and metal prices, as determined by the seller. In other words, per contract, the seller (petitioner) issues two invoices to the buyer. The first, which the seller issues upon shipment, is the Provisional Invoice covering the 90% of the estimated value of the shipment, and the second is the Final Invoice, which the seller issues only after the seller and buyer have reached an agreement regarding the final settlement weights, assays, and quotation or final value of the shipment, which are determined or done after arrival of the shipment at the port of unloading.[43] A similar provision (Article 6) is likewise found in the contract with Louis Dreyfus Commodities Metals Suisse SA.[44]

In other words, the considered date of the sale transaction is the shipment date indicated in the bill of lading. Considering that the bills of lading covering export sales of US$54,276,046.00 and US$96,192,384.00 were all dated within the second and third quarters of 2010, the related final

[40] Exhibit "G-11-b".
[41] Exhibit "G-11-c".
[42] Exhibit "D", Long Term Gold and Copper Concentrates Sales Agreement, Between Philex Mining Corporation and Pan Pacific Copper Co., Ltd.
[43] Memorandum for the Petitioner, docket (CTA Case No. 8553), p. 212.
[44] Exhibits "Q" and "Q-1".

invoices of which carry dates much later than the dates when the sales or shipments were made, are deemed valid.

As to adjustments to correct billings for the previous quarter's shipments in the amount of (US$117,381.00) and (US$1,283,384.00) for the second and third quarter of 2010, respectively, this court finds the adjustments proper as shown by Export Declarations[45], Bill of Ladings[46], Provisional Invoices[47], and Final Invoices[48].

However, petitioner failed to fully comply with the equally significant third requisite.

In his consolidated report, the ICPA stated that the export sales shown in the summary are paid in US dollars or its equivalent in Philippine peso through the banking system in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). The ICPA, as shown in his report, accounted the inward remittances that allegedly correspond to the export sales taking in consideration the petitioner's Catch-up and Marketing Adjustments/Reversals, Customer's Debit Balances at the beginning and at the end of the period and bank charges, summarized as follows:[49]

Particulars	**2nd Quarter**	**3rd Quarter**	**Total**
	(in US Dollar)		
Gross sales per Summary of Sales and Remittance	54,158,665.00	94,909,000.00	149,067,665.00
Catch-up and marketing adjustments/reversals	(3,092,259.00)	(4,171,445.00)	(7,263,704.00)
Net sales	51,066,406.00	90,737,555.00	141,803,961.00
Customer's debit balance at beginning of period	7,920,738.00	8,902,566.00	16,823,304.00
Customer's debit balance at end of period	(8,902,566.00)	(38,888,685.00)	(47,791,251.00)
Gross inward remittances	50,084,578.00	60,751,436.00	110,836,014.00
Bank charges	(25.00)	(52.00)	(77.00)
Inward remittance per bank certificates and passbook entries	**50,084,553.00**	**60,751,384.00**	**110,835,937.00**

The ICPA stated in his report that the remittances received are substantiated by original copies of certificates of inward remittances in the name of the petitioner and entries in

45 Exhibits "G-4" to "G-6" and "G-12" to "G-16".
46 Exhibits "G-4-a" to "G-6-a" and "G-12-a" to "G-16-a".
47 Exhibits "G-4-b" to "G-6-b" and "G-12-b" to "G-16-b".
48 Exhibits "G-4-c" to "G-6-c" and "G-12-c" to "G-16-c".
49 Exhibit "F", No. 8 of the Findings, p. 3.

the passbooks of local banks, namely, Union Bank, Banco de Oro, Philippine National Bank, and Bank of the Philippine Islands.

Per petitioner's Schedule of Export Sales[50], zero-rated sales in the amount of US$54,158,665.00 and US$94,909,000.00 for the second and third quarter of 2010 may be broken down as follows:

Second Quarter of 2010 (in US Dollar)							
Provisional Invoice				**Final Invoice**			**Amount Recorded in the General Ledger**
Exhibit	**Invoice No.**	**Amount**	**90% Provisional Drawing**	**Exhibit**	**Invoice No.**	**Amount**	
Current Quarter's Shipments							
G-1-b	2586	16,725,350.00	15,052,815.00	G-1-c	2593	15,916,380.00	17,282,865.00
G-2-b	2587	17,641,050.00	15,876,945.00	G-2-c	2595	16,006,015.00	17,126,542.00
G-3-b	2589	18,729,614.00	16,856,653.00	G-3-c	2599	18,957,235.00	19,866,639.00
	subtotal	*53,096,014.00*	*47,786,413.00*			*50,879,630.00*	*54,276,046.00*
Catch-up Adjustments to Prior Quarter's Shipments							
G-4-b	2581	18,387,935.00	16,549,141.00	G-4-c	2588	18,847,307.00	68,796.00
G-5-b	2583	16,973,702.00	15,276,332.00	G-5-c	2590	18,279,066.00	(160,273.00)
G-6-b	2584	16,733,501.00	15,060,151.00	G-6-c	2592	16,844,873.00	(25,904.00)
	subtotal	*52,095,138.00*	*46,885,624.00*			*53,971,246.00*	*(117,381.00)*
Total		**105,191,152.00**	**94,672,037.00**			**104,850,876.00**	**54,158,665.00**

Third Quarter of 2010 (in US Dollar)							
Provisional Invoice				**Final Invoice**			**Amount Recorded in the General Ledger**
Exhibit	**Invoice No.**	**Amount**	**90% Provisional Drawing**	**Exhibit**	**Invoice No.**	**Amount**	
Current Quarter's Shipments							
G-7-b	2591	18,991,938.00	17,092,744.00	G-7-c	2598	20,489,279.00	21,216,950.00
G-8-b	2594	19,277,539.00	17,349,785.00	G-8-c	2600	21,934,417.00	22,701,001.00
G-9-b	2596	22,399,587.00	20,159,628.00	G-9-c	2603	25,653,750.00	25,425,984.00
G-10-b	2597	24,259,166.00	21,833,250.00	G-10-c	2606	27,468,303.00	26,478,032.00
G-11-b	PAD-AUREX 117	350,966.00	315,869.00	G-11-c	PAD-AUREX 117	369,186.00	370,417.00
	subtotal	*85,279,196.00*	*76,751,276.00*			*95,914,935.00*	*96,192,384.00*
Catch-up Adjustments to Prior Quarter's Shipments							
G-12-b	2583	16,973,702.00	15,276,332.00	G-12-c	2590	18,279,066.00	-
G-13-b	2584	16,733,501.00	15,060,151.00	G-13-c	2592	16,844,873.00	(614,816.00)
G-14-b	2586	16,725,350.00	15,052,815.00	G-14-c	2593	15,916,380.00	(453,235.00)
G-15-b	2587	17,641,050.00	15,876,945.00	G-15-c	2595	16,006,015.00	(215,333.00)
G-16-b	2589	18,729,614.00	16,856,653.00	G-16-c	2599	18,957,235.00	-
	subtotal	*86,803,217.00*	*78,122,896.00*			*86,003,569.00*	*(1,283,384.00)*
Total		**172,082,413.00**	**154,874,172.00**			**181,918,504.00**	**94,909,000.00**

[50] Exhibit "G".

Based on the Schedule of Sales and Remittances[51] together with the Schedule of Export Sales (with 90% Drawing)[52], as shown in the table below, the 90% of the export sales per Provisional Invoices for the second and third quarter of 2010 shipments substantially corresponds to the inward remittances received by the petitioner. Notice, however, that for Provisional Invoice No. PAD-AUREX-117 with Final Invoice No. PAD-AUREX-117, the inward remittance is more than the 90% Provisional Drawing. Moreover, Provisional Invoice No. 2597 with Final Invoice No. 2606, no inward remittance has yet been received, thus, remains collectible/receivable at the end of the third quarter of 2010.

Since petitioner did not submit any documentary evidence to support the alleged receivables were subsequently collected and accounted for in acceptable foreign currency, the same shall be disregarded in computing the correct amount of zero-rated sales.

Thus, out of the 90% Provisional Drawing in the total amount of US$124,537,689.00 for the second and third quarter's shipments, only US$102,757,710.00 has a corresponding inward remittance, computed as follows:

Current Quarter's Shipments (in US Dollar)						
Prov. Inv. No.	**Final Inv. No.**	**Amount Recorded in the General Ledger**	**90% Provisional Drawing**	**Actual Remittance per Bank Certificates**	**Exhibit**	**Difference**
Second Quarter of 2010						
2586	2593	17,282,865.00	15,052,815.00	15,052,810.00	"H-1"	5.00
2587	2595	17,126,542.00	15,876,945.00	15,876,935.00	"H-2"	10.00
2589	2599	19,866,639.00	16,856,653.00	16,856,642.00	"H-4"	11.00
	subtotal	*54,276,046.00*	*47,786,413.00*	*47,786,387.00*		*26.00*
Third Quarter of 2010						
2591	2598	21,216,950.00	17,092,744.00	17,092,744.00	"H-5"	-
2594	2600	22,701,001.00	17,349,785.00	17,349,785.00	"H-6"	-
2596	2603	25,425,984.00	20,159,628.00	20,159,629.00	"H-9"	(1.00)
2597	2606	26,478,032.00	21,833,250.00	-		21,833,250.00
PAD-AUREX 117	PAD-AUREX 117	370,417.00	315,869.00	369,165.00	"H-7"	(53,296.00)
	subtotal	*96,192,384.00*	*76,751,276.00*	*54,971,323.00*		*21,779,953.00*
Total		**150,468,430.00**	**124,537,689.00**	**102,757,710.00**		**21,779,979.00**

With regard to the Catch-up Adjustments to Prior Quarter's Shipments for the second and third quarter of 2010, only the payments for the Provisional Invoice Nos. 2581, 2583, 2584, 2586 and 2587 with the respective Final Invoice Nos.

[51] Exhibit "H".
[52] Exhibit "G".

2588, 2590, 2592, 2593 and 2595, were inwardly remitted; while for the catch-up adjustment pertaining to Provisional Invoice No. 2589, with Final Invoice No. 2599, no corresponding inward remittance has yet been made. To wit:

Catch-up Adjustments to Prior Quarter's Shipments (in US Dollar)							
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**	**Exhibit**
Second Quarter of 2010							
2581	2588	68,796.00	18,847,307.00	16,549,141.00	2,298,166.00	2,298,166.00	"H-3"
2583	2590	(160,273.00)	18,279,066.00	15,276,332.00	3,002,734.00	-	
2584	2592	(25,904.00)	16,844,873.00	15,060,151.00	1,784,722.00	-	
subtotal		*(117,381.00)*	*53,971,246.00*	*46,885,624.00*	*7,085,622.00*	*2,298,166.00*	
Third Quarter of 2010							
2583	2590	-	18,279,066.00	15,276,332.00	3,002,734.00	3,002,734.00	"H-10"
2584	2592	(614,816.00)	16,844,873.00	15,060,151.00	1,784,722.00	1,784,717.00	"H-12"
2586	2593	(453,235.00)	15,916,380.00	15,052,815.00	863,565.00	863,555.00	"H-11"
2587	2595	(215,333.00)	16,006,015.00	15,876,945.00	129,070.00	129,060.00	"H-8"
2589	2599	-	18,957,235.00	16,856,653.00	2,100,582.00	-	
subtotal		*(1,283,384.00)*	*86,003,569.00*	*78,122,896.00*	*7,880,673.00*	*5,780,066.00*	
Total		**(1,400,765.00)**	**139,974,815.00**	**125,008,520.00**	**14,966,295.00**	**8,078,232.00**	

In sum, the amount of US$46,048,285.00 representing the difference between export sales as recorded in the general ledger and the corresponding inward remittances for the second and third quarter's shipments shall be disallowed as zero-rated sales, as determined below:

(in US Dollar)								
		Amount Recorded in the General Ledger			**Inward Remittance**			**Difference (a-b)**
Prov. Inv. No.	**Final Inv. No.**	**Current Quarter**	**After the Current Quarter**	**Total (a)**	**Current Quarter**	**After the Current Quarter**	**Total (b)**	
Current Quarter's Shipments								
Second Quarter of 2010								
2586	2593	17,282,865.00	(453,235.00)	16,829,630.00	15,052,810.00	863,555.00	15,916,365.00	913,265.00
2587	2595	17,126,542.00	(215,333.00)	16,911,209.00	15,876,935.00	129,060.00	16,005,995.00	905,214.00
2589	2599	19,866,639.00	-	19,866,639.00	16,856,642.00	-	16,856,642.00	3,009,997.00
subtotal		*54,276,046.00*	*(668,568.00)*	*53,607,478.00*	*47,786,387.00*	*992,615.00*	*48,779,002.00*	*4,828,476.00*
Third Quarter of 2010								
2591	2598	21,216,950.00	-	21,216,950.00	17,092,744.00	-	17,092,744.00	4,124,206.00
2594	2600	22,701,001.00	-	22,701,001.00	17,349,785.00	-	17,349,785.00	5,351,216.00
2596	2603	25,425,984.00	-	25,425,984.00	20,159,629.00	-	20,159,629.00	5,266,355.00
2597	2606	26,478,032.00	-	26,478,032.00	-	-	-	26,478,032.00
PAD-AURE X 117	PAD-AURE X 117	370,417.00	-	370,417.00	369,165.00	-	369,165.00	-
subtotal		*96,192,384.00*	-	*96,192,384.00*	*54,971,323.00*	-	*54,971,323.00*	*41,219,809.00*

Catch-up Adjustments to Prior Quarter's Shipments								
Second Quarter of 2010								
2581	2588	68,796.00	-	68,796.00	2,298,166.00	-	2,298,166.00	-
2583	2590	(160,273.00)	-	(160,273.00)	-	3,002,735.00	3,002,735.00	-
2584	2592	(25,904.00)	(614,816.00)	(640,720.00)	-	1,784,717.00	1,784,717.00	-
	subtotal	*(117,381.00)*	*(614,816.00)*	*(732,197.00)*	*2,298,166.00*	*4,787,452.00*	*7,085,618.00*	-
TOTAL		**150,351,049.00**	**(1,283,384.00)**	**149,067,665.00**	**105,055,876.00**	**5,780,067.00**	**110,835,943.00**	**46,048,285.00**

Accordingly, petitioner's export sales for the second and third quarter of 2010 with the net adjusted amount of US$49,330,189.00 and US$53,318,774.00, respectively, qualify for VAT zero-rating, *to wit*:

	2nd Quarter	**3rd Quarter**	**Total**
		(in US Dollar)	
Zero-rated Sales	54,158,665.00	94,909,000.00	149,067,665.00
Less: Sales without corresponding inward remittance	4,828,476.00	41,219,809.00	46,048,285.00
Sales of gold to Heraeus Ltd.	-	370,417.00	370,417.00
Total	4,828,476.00	41,590,226.00	46,418,702.00
Adjusted Zero-rated Sales	**49,330,189.00**	**53,318,774.00**	**102,648,963.00**

After having resolved that petitioner had VAT zero-rated sales for the second and third quarters of 2010 in the total amount of US$102,648,963.00, *We* proceed to the determination of 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 quarter of 2010 reflected an input VAT of ₱62,563,382.00 on importations of goods other than capital goods and ₱33,949,923.49 on domestic purchases of services or in the total input VAT amount of ₱96,513,305.49, as shown below:

Input VAT on	**2nd Quarter**	**3rd Quarter**	**Total**
Importation of Goods (other than Capital Goods)	₱ 32,555,159.00	₱ 30,008,223.00	₱ 62,563,382.00
Domestic Purchases of Services	12,493,762.68	21,456,160.81	33,949,923.49
Total Input VAT	**₱ 45,048,921.68**	**₱ 51,464,383.81**	**₱ 96,513,305.49**

To determine the accuracy of petitioner's declaration, the ICPA examined the voluminous documents of petitioner in support of its claim for refund. In his Report, the ICPA noted the following findings:

Findings	Exhibit	2nd Quarter	3rd Quarter	Total
Input VAT on Importations of Goods (other than Capital Goods)				
1. Supported by original SSDTs/BDAs/BORs and IEIRDs				
a) Dated in the current quarter	"I-1" to "I-65-a", "I-96" to "I-112-a"	₱ 22,939,828.00	₱ 6,694,161.00	₱ 29,633,989.00
b) Not dated in the current quarter				
Dated second quarter of 2009	"I-113" to "I-113-a"	-	2,208,473.00	2,208,473.00
Dated third quarter of 2009	"I-114" to "I-115-a"	-	4,226,927.00	4,226,927.00
Dated fourth quarter of 2009	"I-116" to "I-117-a"	-	1,550,679.00	1,550,679.00
Dated first quarter of 2010	"I-66" to "I-95-a", "I-118" to "I-118-a"	9,342,980.00	770,691.00	10,113,671.00
Dated second quarter of 2010	"I-119" to "I-137-a"	-	14,395,881.00	14,395,881.00
2. Supported by original SSDTs only				
a) Dated in the current quarter	"J-1" to "J-2"	235,577.00	-	235,577.00
3. No supporting documents		36,774.00	161,411.00	198,185.00
subtotal		*32,555,159.00*	*30,008,223.00*	*62,563,382.00*
Input VAT on Domestic Purchase of Services				
1. Supported by original VAT official receipts that are in the name of the petitioner				
a) Dated in the current quarter	"L-1" to "L-47", "L-79" to "L-150"	12,358,392.06	21,262,626.82	33,621,018.88
b) Not dated in the current quarter				
Dated in the first quarter of 2010	"L-48" to "L-77"	24,843.12	-	24,843.12
Dated in the second quarter of 2010	"L-151" to "L-166"	-	12,780.21	12,780.21
No date indicated	"L-78", "L-167"	27,456.00	1,460.36	28,916.36
2. No supporting documents		83,071.50	179,293.42	262,364.92
subtotal		*12,493,762.68*	*21,456,160.81*	*33,949,923.49*
Total Input VAT		**₱ 45,048,921.68**	**₱ 51,464,383.81**	**₱ 96,513,305.49**

Based on the above findings, petitioner's claim in the amount of ₱18,614,059.40 shall be disallowed for the reasons stated below:

Findings	Exhibit	2nd Quarter	3rd Quarter	Total
Input VAT on Importations of Goods (other than Capital Goods)				
1. Supported by original SSDTs/BDAs/BORs and IEIRDs				
a) Not dated in the current quarter				
Dated second quarter of 2009	"I-113" to "I-113-a"	-	₱ 2,208,473.00	₱ 2,208,473.00
Dated third quarter of 2009	"I-114" to "I-115-a"	-	4,226,927.00	4,226,927.00
Dated fourth quarter of 2009	"I-116" to "I-117-a"	-	1,550,679.00	1,550,679.00
Dated first quarter of 2010	"I-66" to "I-95-a",	₱ 9,342,980.00	770,691.00	10,113,671.00

	"I-118" to "I-118-a"			
2. No supporting documents		36,774.00	161,411.00	198,185.00
subtotal		**9,379,754.00**	**8,918,181.00**	**18,297,935.00**
Input VAT on Domestic Purchase of Services				
1. Supported by original VAT official receipts that are in the name of the petitioner				
a) Not dated in the current quarter				
Dated in the first quarter of 2010	"L-48" to "L-77"	24,843.12	-	24,843.12
No date indicated	"L-78", "L-167"	27,456.00	1,460.36	28,916.36
2. No supporting documents		83,071.50	179,293.42	262,364.92
subtotal		**135,370.62**	**180,753.78**	**316,124.40**
Total		**₱9,515,124.62**	**₱9,098,934.78**	**₱18,614,059.40**

Upon further review of the ICPA's report together with the petitioner's supporting documents, the Court finds that the input taxes in the amount of ₱1,141,906.03 on domestic purchases of services should be disallowed from petitioner's claim for not being properly substantiated by VAT official receipts as prescribed under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended. Below is the breakdown of the input taxes of ₱1,141,906.03:

Findings	**Exhibit**	**2nd Quarter**	**3rd Quarter**	**Total**
A. Supported by Official Receipts with noted additions separating the amount of VAT without countersignature of the authorized representative of the supplier				
Syn Expeditors Int'l, Inc.	"L-2"	₱ 777.90	-	₱ 777.90
Airfreight 2100, Inc.	"L-11"	4,297.00	-	4,297.00
Safeway Warehousing, Inc.	"L-14"	920.84	-	920.84
Intertek Testing Services Phils., Inc.	"L-21"	21,226.04	-	21,226.04
Intertek Testing Services Phils., Inc.	"L-34"	10,511.78	-	10,511.78
McPhar GeoServices (Philippines), Inc.	"L-35"	54,912.00	-	54,912.00
Intertek Testing Services Phils., Inc.	"L-36"	64,786.72	-	64,786.72
Edsa Shangrila	"L-37"	2,066.16	-	2,066.16
Intertek Testing Services Phils., Inc.	"L-38"	9,115.13	-	9,115.13
McPhar GeoServices (Philippines), Inc.	"L-43"	41,395.20	-	41,395.20
Intertek Testing Services Phils., Inc.	"L-44"	25,044.34	-	25,044.34
Philippine World Travel, Incorporated	"L-46"	108.00	-	108.00
McPhar GeoServices (Philippines), Inc.	"L-47"	21,727.20	-	21,727.20
SGS Philippines, Inc.	"L-87"	-	₱ 1,220.54	1,220.54
Intertek Testing Services Phils., Inc.	"L-95"	-	33,203.53	33,203.53
Intertek Testing Services Phils., Inc.	"L-96"	-	61,393.65	61,393.65
Dusit Thani	"L-97"	-	23,714.56	23,714.56
Nutex Equipment Supply	"L-101"	-	7,275.00	7,275.00

Pacific Office Machines	"L-103"	-	242.68	242.68
Ford Libis	"L-105"	-	168.00	168.00
Sunny Smile Food Corporation	"L-108"	-	207.41	207.41
Cravings Bake Shop & Restaurant	"L-109"	-	161.00	161.00
Intertek Testing Services Phils., Inc.	"L-110"	-	44,438.37	44,438.37
Edsa Shangrila	"L-111"	-	1,800.00	1,800.00
Edsa Shangrila	"L-112"	-	900.00	900.00
Water Safe Supply, Inc.	"L-116"	-	16.07	16.07
McPhar GeoServices (Philippines), Inc.	"L-118"	-	27,561.60	27,561.60
McPhar GeoServices (Philippines), Inc.	"L-119"	-	27,984.00	27,984.00
McPhar GeoServices (Philippines), Inc.	"L-120"	-	100,531.20	100,531.20
Freshwind Sales & Marketing	"L-121"	-	321.43	321.43
Intertek Testing Services Phils., Inc.	"L-122"	-	214,728.89	214,728.89
Flavours of China Restaurant	"L-123"	-	107.68	107.68
Tazza Italia Café Corporation	"L-124"	-	28.01	28.01
UCC Coffee Shop	"L-125"	-	53.65	53.65
Aberdeen Court	"L-126"	-	269.46	269.46
Oliver's Super Sandwiches Phils., Inc.	"L-129"	-	284.74	284.74
Burger Charlies Grind & Grill Corp.	"L-132"	-	380.36	380.36
Intertek Testing Services Phils., Inc.	"L-134"	-	62,912.72	62,912.72
Goldland Regency Mngt. Corp.	"L-136"	-	2,742.86	2,742.86
Carryboy Phils., Inc.	"L-137"	-	123.21	123.21
Holland Blooms Flower Shops, Inc.	"L-140"	-	375.00	375.00
Intertek Testing Services Phils., Inc.	"L-142"	-	57,349.87	57,349.87
Edsa Shangrila	"L-148"	-	4,080.00	4,080.00
McPhar GeoServices (Philippines), Inc.	"L-149"	-	208,876.80	208,876.80
Edsa Shangrila	"L-150"	-	1,020.00	1,020.00
subtotal		*256,888.31*	*884,472.29*	*1,141,360.60*
B. Supported by documents other than VAT Official Receipts				
Association of Int'l Shipping Lines, Inc.	"L-5"	16.07	-	16.07
Association of Int'l Shipping Lines, Inc.	"L-8"	2.68	-	2.68
Association of Int'l Shipping Lines, Inc.	"L-15"	29.49	-	29.49
Association of Int'l Shipping Lines, Inc.	"L-20"	2.68	-	2.68
Association of Int'l Shipping Lines, Inc.	"L-25"	2.68	-	2.68
Association of Int'l Shipping Lines, Inc.	"L-31"	2.68	-	2.68
Association of Int'l Shipping Lines, Inc.	"L-32"	5.36	-	5.36
Association of Int'l Shipping Lines, Inc.	"L-80"	-	2.68	2.68
Association of Int'l Shipping Lines, Inc.	"L-84"	-	16.07	16.07
Association of Int'l Shipping Lines, Inc.	"L-89"	-	5.36	5.36
Association of Int'l Shipping Lines, Inc.	"L-90"	-	29.46	29.46
Association of Int'l Shipping Lines, Inc.	"L-94"	-	5.36	5.36
Association of Int'l Shipping Lines, Inc.	"L-98"	-	5.36	5.36
Silicon Valley Computer Science Center	"L-104"	-	101.79	101.79
Batangueños Bulalo & Seafood Rest	"L-115"	-	176.64	176.64
Association of Int'l Shipping Lines, Inc.	"L-153"	-	10.71	10.71
Association of Int'l Shipping Lines, Inc.	"L-162"	-	29.46	29.46
subtotal		*61.64*	*382.89*	*444.53*
C. No taxable year indicated				
DHL Express	"L-10"	57.68	-	57.68

DHL Express	"L-85"	-	33.60	33.60
DHL Express	"L-139"	-	9.62	9.62
subtotal		*57.68*	*43.22*	*100.90*
Total Disallowance per this Court's Findings		**₱ 257,007.63**	**₱884,898.40**	**₱1,141,906.03**

Therefore, out of petitioner's reported input VAT for the second and third quarter of 2010 in the amount of ₱96,513,305.49, only the amount of ₱76,757,340.06 represents petitioner's valid input tax, tabulated below:

	2nd Quarter	**3rd Quarter**	**Total**
Input VAT Claimed	₱ 45,048,921.68	₱ 51,464,383.81	₱ 96,513,305.49
Less: Disallowances			
a) Based on the ICPA Report	9,515,124.62	9,098,934.78	18,614,059.40
b) Per this Court's findings	257,007.63	884,898.40	1,141,906.03
Valid Input VAT	**₱ 35,276,789.43**	**₱ 41,480,550.63**	**₱ 76,757,340.06**

A portion, however, of the ₱76,757,340.06 valid input VAT shall be applied against petitioner's reported output VAT liability for the second and third quarter of 2010 in the amount of ₱3,333,336.19 and ₱1,181,852.05, respectively. Hence, for the second and third quarter of CY 2010, only the remaining input VAT of ₱72,242,151.82 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱6,709,993,482.60 (with US$ equivalent of US$149,067,665.00) and only the input VAT of ₱51,734,898.99 is attributable to the valid zero-rated sales of ₱4,625,761,574.09 (with US$ equivalent of US$102,648,963.00), as computed below:

	2nd Quarter	**3rd Quarter**	**Total**
Valid Input VAT	₱ 35,276,789.43	₱ 41,480,550.63	₱ 76,757,340.06
Less: Output VAT	3,333,336.19	1,181,852.05	4,515,188.24
Refundable Input VAT attributable to zero-rated sales	**₱ 31,943,453.24**	**₱ 40,298,698.58**	**₱ 72,242,151.82**
Multiply by: Allocation Factor *(Valid Zero-Rated Sales ÷ Total Zero-Rated Sales)*			
Total Zero-Rated Sales in Php	₱ 2,452,792,258.63	₱ 4,257,201,223.97	₱ 6,709,993,482.60
x Valid Zero-Rated Sales in US$	49,330,189.00	53,318,774.00	102,648,963.00
÷ Total Zero-Rated Sales in US$	54,158,665.00	94,909,000.00	149,067,665.00
= Valid Zero-Rated Sales in Php	**₱ 2,234,115,366.32**	**₱ 2,391,646,207.77**	**₱ 4,625,761,574.09**
Allocation Factor	91.08457345%	56.17883868%	
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱ 29,095,558.13**	**₱ 22,639,340.86**	**₱ 51,734,898.99**

Although the claimed input VAT was carried-over by petitioner in its succeeding Quarterly VAT Returns[53] from the fourth quarter of 2010 to the first quarter of 2012, the same remained unutilized since it was deducted in its Quarterly VAT Return for the first quarter of 2012, as "VAT Refund/TCC claimed"[54] from the total available input tax of ₱299,156,674.21[55]. Thus, the claimed input taxes for the second and third quarter of 2010 could not have been carried-over/utilized in the succeeding second quarter of 2012.

In sum, the Court finds that petitioner has sufficiently proven its entitlement to a refund for its unutilized input VAT attributable to its zero-rated sales for the second and third quarter of 2010, but in the reduced amount of ₱51,734,898.99.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount of ₱51,734,898.99, representing its unutilized and excess input VAT attributable to its zero-rated sales for the second and third quarter of 2010.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

---

[53] Exhibits "N-3" to "N-8".
[54] Exhibit "N-8(1/2)", line 23D.
[55] Exhibit "N-8(1/2)", line 22.

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 Section 13, Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice