REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7426
Members:

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

Promulgated:
FEB 04 2009; 1:45pm

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AMENDED DECISION

CASANOVA, *J.*:

On July 16, 2008, petitioner filed a "**Motion for Reconsideration/New Trial"**, of Our Decision promulgated on July 2, 2008.

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

"I

THE SALES INVOICE THAT COVERED THE SAME WAS NOT REGISTERED WITH THE BIR, AND THE WORD 'VAT' WAS NOT PRINTED AFTER PETITIONER'S TIN NUMBER, SUPPOSEDLY IN VIOLATION OF SECTIONS 113, 237 AND 238 OF THE TAX CODE, AND SECTION 4.108-1 OF REVENUE REGULATIONS (RR) NO. 7-95.

II

270

> THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S INDIRECT EXPORT SALES TO PASAR ALSO DO NOT QUALITFY FOR VAT ZERO-RATING BECAUSE THE DATES OF FINAL SALES INVOICES THAT COVERED THE SALES FALL OUTSIDE THE PERIOD OF THE CLAIM IN THE PETITION. THE FACT IS THAT SAID SALES INVOICES PERTAIN TO THE PERIOD OF THE CLAIM."

On September 3, 2008, We issued a Resolution with the following dispositive portion:

> "**WHEREFORE**, petitioner's '**Motion for Reconsideration/New Trial'** is **PARTIALLY GRANTED**. This Court **DENIES** petitioner's prayer for the reconsideration of its sales to Johnson Matthey as zero-rated but otherwise **GRANTS** the prayer for the presentation of additional documents with respect to its sales to Philippine Associated Smelting and Refining Corporation.
>
> Let this case be set for hearing on September 23, 2008 at 9:00 AM for the presentation of the originals or certified true copies of the provisional invoices for consideration and evaluation without prejudice to the final determination of petitioner's right to the additional tax refund.
>
> **SO ORDERED.**"

The case was reset for hearing on October 30, 2008 and on such date, petitioner presented an additional witness plus documentary exhibits and rested its case[1]. Petitioner filed its Supplemental Formal Offer of Evidence[2] on November 5, 2008 which this Court resolved by admitting all its additional documentary evidence on December 4, 2008 [3].

Upon review of the additional documents presented, this Court resolves to partially grant petitioner's claim for refund of unutilized input Value Added Tax

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[1] *Rollo*, p. 234.
[2] *Rollo*, pp. 240-249.
[3] *Rollo*, p. 268.

271

(VAT) arising from its indirect export sales to Philippine Associated Smelting and Refining Corporation (PASAR).

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

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

Pursuant to such requirements, We ruled that petitioner is entitled to VAT zero-rating under Section 106(A)(2)(a)(5) of the 1997 National Internal Revenue Code, in relation to Articles 23 and 77(2) of the Omnibus Investments Code and as clarified under RMC No. 74-99. However, We further said that petitioner must first substantiate its indirect exports to PASAR by proper VAT sales invoices, among others, to be qualified for a refund. Evidence forwarded to this Court showed that the sales invoices covering petitioner's indirect export sales to PASAR in the amount of US$17,269,513.00 fell outside the subject period of

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4 *Rollo,* pp. 165-179.
5 *Rollo,* p. 165.

claim, thus, petitioner's reported indirect export sales to PASAR cannot qualify for VAT zero-rating[6].

With the supplemental documents of petitioner, We rule that petitioner's sales can now be deemed as zero-rated but not in the full amount.

In its Motion for Reconsideration/New Trial, petitioner explained that the sales invoices presented for consideration are not actually out of period of claim considering that the same invoices pertained to transactions occurring within the 1st quarter of 2004. The supplemental documentary evidence submitted by petitioner to this Court to prove such allegation is as follows:

Provisional Invoice No.	Date	Exhibit No.	Estimated Value	90% Provisional Payment	Exhibit No.
2344	01/08/04	"K"	$1,121,496.97	$1,009,347.27	"K-1"
2346	01/14/04	"L"	$1,223,315.67	$1,100,984.10	"L-1"
2347	01/21/04	"M"	$1,196,393.53	$1,076,754.18	"M-1"
2348	02/02/04	"N"	$1,188,807.25	$1,069,926.53	"N-1"
2349	02/05/04	"O"	$1,139,523.30	$1,025,570.97	"O-1"
2350	02/13/04	"P"	$1,214,746.55	$1,093,271.90	"P-1"
2351	02/19/04	"Q"	$1,212,359.96	$1,091,123.96	"Q-1"
2354	03/01/04	"R"	$1,269,410.11	$1,142,469.10	"R-1"
2355	03/04/04	"S"	$1,298,280.67	$1,168,452.60	"S-1"
2357	03/18/04	"T"	$1,320,857.86	$1,188,772.07	"T-1"
2358	03/23/04	"U"	$1,337,843.97	$1,204,059.57	"U-1"
2361	04/01/04	"V"	$1,298,353.69	$1,168,518.32	"V-1"

With the presentation of the said provisional invoices, petitioner sufficiently proved that the final sales invoices[7] supporting its indirect export sales of copper concentrates to PASAR in the amount of US$17,269,513.00 are

[6] Decision, *Rollo,* pp. 177.
[7] Exhibits "D-2" to "D-13".

within period of claim, hence, valid. As computed below, this amount of US$17,269,513.00 has a peso equivalent of P969,335,766.99.

Declared Zero-Rated Sales in Php	976,434,850.24
Divided by Declared Zero-Rated Sales in US$	÷ 17,395,989.00
Average peso to dollar rate	56.13
Multiplied by Substantiated Zero-rated Sales in US$	x 17,269,513.00
Substantiated Zero-Rated Sales in Php	**969,335,766.99**

In its amended VAT return for the 1st quarter of 2004 [8], petitioner reported the amount of US$17,395,989.00 as its zero-rated sales broken down below:

Particulars		**Amount**
Current Quarter's Shipments:		
Direct export of gold to England	US$	48,517
Indirect exports of copper to PASAR		17,269,513
	US$	17,318,030
Previous Quarters' Shipments		
Adjustment to correct previous billings		77,959
Total Zero-Rated Sales		**US $17,395,989**

Petitioner's computation of catch-up adjustments[9] amounting to US$77,959.00, cannot be considered for VAT zero-rating for petitioner's failure to present supporting documents. Therefore, out of the reported zero-rated sales of US$17,395,989.00 for the 1st quarter of 2004, only the indirect export sales to PASAR in the total amount of US$17,269,513.00 with peso equivalent of P969,335,766.99, qualify for VAT zero-rating.

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[8] Exhibit "H-9"; Decision, *Rollo,* p. 170.
[9] Exhibit "K".

274

Going now to the second requirement, We proceed to the determination of whether petitioner's input taxes in connection with its zero-rated sales for the 1st quarter of 2004 were duly incurred or duly substantiated.

In its VAT return for the 1st quarter of 2004[10], petitioner reflected an input VAT of P32,552.74 on domestic purchases and an input VAT of P9,378,775.00 on importations totaling to P9,411,327.74, as shown below:

	Purchases	Input Tax
Domestic Purchases - Goods other than Capital Goods	P 325,527.40	P 32,552.74
Importations - Goods other than Capital Goods	93,787,750.00	9,378,775.00
Total	**P 94,113,277.40**	**P 9,411,327.74**

To determine the accuracy of petitioner's declaration, the Court commissioned an independent CPA (ICPA) to examine the voluminous documents of petitioner in support of its claim for refund.

With regard to the input taxes on domestic purchases, the Court-commissioned ICPA, in his report dated November 3, 2006 [11], noted the following findings:

	Particulars	Amount
A	Original VAT official receipts that are in the name of petitioner	
	a.1 VAT Official Receipts dated in the current quarter	P 21,165.95
	a.2 Out of period receipts dated 2nd quarter of 2004	2,095.14
B	No supporting VAT official receipts presented	8,987.67
C	No supporting VAT invoices presented	3,388.29
D	Negative input VAT	(3,084.31)
	TOTAL	**P 32,552.74**

[10] Exhibit "H-9".
[11] Exhibit "I".

It appears that only the input VAT of P21,165.95 represents petitioner's valid claim while the remaining amount of P11,386.79 should be denied for being out of period and for lack of substantiating documents.

Going now to the input VAT payment on petitioner's importations, the ICPA noted the following findings:

Particulars	Amount
Input taxes paid on importation of:	
a. Capital goods	P 555,069.00
b. Other than capital goods	8,659,299.00
c. Input tax payments with no supporting documents	164,407.00
TOTAL	**P9,378,775.00**

However, upon closer scrutiny of the records of the case, out of P9,378,775.00, only the amount of P6,842,820.00 is a valid claim considering that it was directly paid to the Bureau of Customs and is duly covered by official receipts. The breakdown for this smaller amount is as follows:

Items Imported	Exhibit No.	Input VAT
Code No.9107315125	F-3	P 2,313.00
1 container DK froth	F-10	139,821.00
402 drums sodium isobutyl xanthate	F-11	206,733.00
80 drums dowfroth 250	F-12	118,685.00
92 drums grinding balls	F-13	170,830.00
1 container/ 1 case stc pump	F-14	110,378.00
1 valve	F-20	7,536.00
4 pallets and 1 crate axial fan	F-23	158,564.00
92 drums grinding balls	F-24	154,263.00
1 container DK froth	F-33	141,514.00
80 drums dowfroth 250	F-34	120,120.00
402 drums sodium isobutyl xanthate	F-35	209,235.00
1 container dry tare	F-39	1,460,121.00
1 container dry tare	F-40	1,460,121.00

1 mainshaft	F-41	260,401.00
45 pcs polylthylene	F-42	37,683.00
1 container dry tare	F-43	2,084,502.00
Total		**P 6,842,820.00**

The amount of P2,371,548.00 shall be disallowed considering that the Import Entry and Internal Revenue Declarations[12] (IERDs) supporting such importations were not admitted by the Honorable Court for failure of the petitioner to present the originals[13]. Likewise, the Bank Debit Advices[14] are inadmissible since these do not indicate the actual input VAT payments. Furthermore, no official receipts or other documents proving actual payment of VAT on the imported goods were presented to support such claim. The details of the disallowance is as follows:

Items Imported	Exhibit No.		Input VAT	Total
a. Supported by Bank Debit Advice, but IERD not admitted by the Court				
3 units engine	F-1	F-1-a	P384,417.00	
6 units electric motor	F-2	F-2-a	170,652.00	
2 cases sts parts for engine	F-4	F-4-a	83,455.00	
1 crate sts parts for classifier	F-5	F-5-a	255,353.00	
1 case parts for generator set	F-6	F-6-a	139,019.00	
30 pcs screen woven wire	F-7	F-7-a	148,649.00	
1 unit david brown radicon speed	F-8	F-8-a	45,862.00	
1 pallet screen panel	F-9	F-9-a	45,166.00	
3 pallets lead compound	F-15	F-15-a	54,696.00	
1 package parts for shotcrete	F-16	F-16-a	43,229.00	
1 case parts for pump	F-17	F-17-a	39,215.00	
1 case scree sieve band	F-18	F-18-a	62,936.00	
1 container hydraulic lock post	F-19	F-19-a	104,951.00	
3 container parts for crusher	F-21	F-21-a	73,280.00	
1 crate sts mining machinery spares	F-22	F-22-a	37,509.00	
1 container socket liner	F-25	F-25-a	28,808.00	
1 pallet parts for crusher	F-26	F-26-a	46,313.00	

[12] Exhibits "F-1-a" to "F-38-a".
[13] Resolution dated October 19, 2007, Rollo, page 135.
[14] Exhibits "Q63" to "Q89".

	120 pcs conveyor roller	F-27	F-27-a	13,387.00	
	1 crate spare parts for generator set	F-28	F-28-a	230,312.00	
	1 container parts for rock drill	F-29	F-29-a	32,870.00	
	1 container rock crusher parts	F-30	F-30-a	81,823.00	
	2 bundles screen woven wire	F-31	F-31-a	45,424.00	
	5 bundles screen woven wire	F-32	F-32-a	97,439.00	
	1 container plug/socket	F-36	F-36-a	16,117.00	
	3 containers parts for machine sort	F-37	F-37-a	58,517.00	
	2 container parts for miners cap lamp	F-38	F-38-a	32,149.00	**P 2,371,548.00**
b.	**No supporting documents presented**				
	IEIRD No. 49885141			7,726.00	
	IEIRD No.			2,014.00	
	IEIRD No. 49795141			22,048.00	
	IEIRD No. 49300781			10,762.00	
	IEIRD No.			5,312.00	
	IEIRD No. 51268612			114,489.00	
	IEIRD No. 49885141			2,056.00	**164,407.00**
	TOTAL				**P 2,535,955.00**

As a rule, input tax on importations should be supported with IEIRDs duly validated for actual payment of the input tax. Petitioner must prove the actual payment of VAT on the imported goods by submitting the documents specified in Section 4.104-5(b) of Revenue Regulations No.7-95. The required evidence is the import entry or other equivalent document. Thus, without these documents, petitioner's claimed input VAT payment in the amount of P2,371,548.00 cannot be granted.

The input taxes of P164,407.00 shall likewise be disallowed for petitioner's failure to present before this Court any supporting documents proving the same.

After the above deductions, only the amount of P6,863,985.95 is duly substantiated by valid supporting documents, computed as follows:

Substantiated Input tax on domestic purchases	P 21,165.95
Substantiated Input tax on importations	6,842,820.00
Total Substantiated Input Tax	**P 6,863,985.95**

With respect to the third requisite, petitioner has likewise complied with the same considering that the sales to PEZA-registered entities are zero-rated. Nonetheless, the amount of P6,863,985.95 should be further reduced by petitioner's reported output VAT liability of P213,975.00.[15] Hence, only the remaining input VAT of P6,650,010.95 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P976,434,850.24 as computed below:

Substantiated input VAT	P 6,863,985.95
Less: Output Tax	213,975.00
Excess Input Tax	**P 6,650,010.95**

Nevertheless, the amount of P6,650,010.95 shall be reduced to P6,601,662.63 since this is the only input VAT attributable to the substantiated zero-rated sales of P969,335,766.99. This was arrived at in the following manner:

Substantiated Zero-rated Sales	P969,335,766.99
Divided by Total Reported Zero-Rated Sales	÷976,434,850.24
Multiplied by Substantiated Excess Input VAT	x 6,650,010.95
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	**P 6,601,662.63**

15 Exhibit "H-9".

With respect to the fourth requisite, petitioner also complied with the same. As evidenced by its Quarterly VAT Returns[16] from the 2nd quarter of 2004 to 2nd quarter of 2005, petitioner was able to prove that the input VAT of P6,601,662.63 was not applied against any output VAT in the succeeding quarters.

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period both in the administrative and judicial levels. Records show that petitioner filed its administrative and judicial claims on June 22, 2005[17] and March 31, 2006, respectively, both within the two-year period reckoned from April 23, 2004, the date when petitioner filed its Quarterly VAT Return[18] for the first quarter of 2004.

WHEREFORE, in view of the foregoing, petitioner's claim for refund of its unutilized input VAT for the 1st quarter of taxable year 2004 with respect to its sales to PASAR is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED to REFUND** to petitioner the reduced amount of **P6,601,662.63**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[16] Exhibits "H-10" to "H-14".
[17] Petition for Review, Annex "C" and Annex "D".
[18] Petition for Review, Annex "B".

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division