REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILEX MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8753 and 8762

Members:

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

Promulgated:

FEB 17 2016
3:45 p.m.

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DECISION

FABON-VICTORINO, J.:

On different dates, petitioner Philex Mining Corporation filed two (2) Petitions for Review for the refund of alleged unutilized input value-added tax (VAT) paid on its purchases of goods and services attributable to zero-rated sales for the third (3^{rd}) and fourth (4^{th}) quarters of 2011, broken down as follows:

CTA Case No.	Period Covered (2011)	Amount involved
8753	Third Quarter	₱16,890,978.40
8762	Fourth Quarter	₱43,905,831.81

It appears that petitioner is a domestic corporation with principal office address at 27 Brixton Street, Pasig City. It is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is a VAT-registered company with VAT Registration Certificate No. 35-

6-000731 effective October 29, 1997[1], and per Bureau of Internal Revenue (BIR) Form No. 2303, as of January 31, 1997. It also has an approved Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.

Respondent, on the other hand, is the Commissioner of the BIR, authorized to act on claims for refund or issuance of tax credit certificate in accordance with the law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

During the 3rd and 4th quarters of 2011, petitioner sold and actually shipped its mineral products to foreign buyers as direct exports or zero-rated sales in the amounts of ₱3,262,099,331.45 and ₱5,532,108,438.50, respectively.

On October 24, 2011[2] and January 20, 2012[3], petitioner filed its original or tentative VAT returns for the 3rd and 4th quarters of 2011, respectively.

On September 20, 2012, petitioner amended its VAT return for the 4th quarter of 2011[4], reflecting a total zero-rated sales of ₱5,532,108,438.50 and vatable sales/receipts of ₱6,190,303.08, with corresponding output tax of ₱742,836.37. During the same quarter, petitioner imported goods other than capital goods in the total amount of ₱355,855,916.87 and purchased domestic services in the amount of ₱16,216,319.67, all for use in its mining operations, production and sale of its mine products. For such importation of goods and purchases of services petitioner paid the respective amounts of ₱42,702,710.00 and ₱1,945,958.36, or a total input tax of ₱44,648,668.36.

On October 1, 2013, petitioner amended its VAT return for the 3rd quarter of 2011[5], reflecting total zero-rated sales of ₱3,262,099,331.44 and vatable sales/receipts of ₱21,408,283.42, with corresponding output tax of

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[1] Exhibit "P-16-l".
[2] Exhibit "P-16-a".
[3] Exhibit "P-16-c".
[4] Exhibit "P-16-d".
[5] Exhibit "P-16-b".

₱2,568,994.01. During the same quarter, petitioner imported goods other than capital goods in the total amount of ₱157,632,391.37 and purchased domestic services in the amount of ₱4,534,045.05, also for the use in its mining operations, production and sale of its mine products. For such importation of goods and purchases of services, petitioner paid input taxes in the respective amounts of ₱18,915,887.00 and ₱544,085.41, or a total input tax of ₱19,459,972.41.

On September 5, 2013, petitioner filed its administrative claims for refund for the 3rd and 4th quarters of 2011 with the One-Stop-Shop Center (OSS) of the Department of Finance (DOF), in the respective amounts of ₱16,890,978.40[6] and ₱43,905,831.81[7].

Due to respondent's inaction on the said administrative claims for refund, petitioner filed two (2) separate Petitions for Review on January 6, 2014[8] and January 30, 2014[9] docketed as CTA Case No. 8753 and CTA Case No. 8762, for the refund of its alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for 3rd and 4th quarters of 2011.

On February 5, 2014[10] and March 31, 2014[11], respondent filed her respective Answers to the two (2) Petitions for Review basically saying that petitioner must first prove strict compliance with the pertinent laws, rules, and regulations since tax refunds are construed strictly against the taxpayer as they partake the nature of tax exemptions.

In the Resolution dated June 3, 2014,[12] the two Petitions for Review were consolidated at the instance of petitioner.

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[6] Exhibit "P-2".
[7] Exhibit "P-3".
[8] CTA Case No. 8753, docket, pp. 6-9.
[9] CTA Case No. 8762, docket, pp. 6-9.
[10] CTA Case No. 8753, docket, pp. 25-27.
[11] CTA Case No. 8762, docket, pp. 31-35.
[12] CTA Case No. 8753, docket, p. 117.

A Pre-Trial Order was issued on August 27, 2014[13] considering the parties' Joint Stipulation of Facts and Issues filed on July 10, 2014[14].

During the trial, petitioner presented its witnesses Eileen C. Rodriguez and ICPA Albert G. Alba.

Witness **Eileen C. Rodriguez,** testified[15] that as petitioner's Accounting Manager, she supervised the preparation and filing of petitioner's VAT Returns for the 3rd and 4th quarters of 2011 up to the filing of its claims for refund of excess input VAT for the same quarters with the OSS of the DOF together with the supporting documents on September 5, 2013, as appearing in Claim Information Sheet Nos. 53168[16] and 53169[17].

She further declared that petitioner is engaged in the mining industry, producing mainly copper concentrates and partly gold bullions. During the 3rd and 4th quarters of 2011, petitioner sold its copper concentrates to Pan Pacific Copper Co., Ltd., a Japanese company based in Tokyo, Japan under the Long Term Gold and Copper Concentrates Sales Agreement[18]. Petitioner also sold copper concentrates to Louis Dreyfus Commodities Metals (LD Metals), a Swiss company acting as broker for other foreign buyers.

The contract of sale denominated as Long Term Gold and Copper Concentrates Sales Agreement dated March 11, 2004 is conterminous with petitioner's mining operation in Baguio.

Petitioner's other witness, Independent Certified Public Accountant (ICPA) **Albert G. Alba** testified[19] that he examined, audited and evaluated petitioner's documents in support of its claims for VAT refund of excess input taxes for the 3rd and 4th quarters of 2011. His audit revealed that out of petitioner's total input taxes for the 3rd and 4th quarters of

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[13] *Ibid.*, docket, pp. 236-242.
[14] *Ibid.*, docket, pp. 224-229.
[15] Exhibits "P-1" and "P-1-a".
[16] Exhibit "P-2".
[17] Exhibit "P-3".
[18] Exhibit "P-4".
[19] Exhibits "P-5" and "P-5-a".

2011 in the amounts of ₱19,459,972.41 and ₱44,648,668.63, respectively, the amounts of ₱2,568,994.01 and ₱740,836.37 were used to pay its tax liabilities for the same period leaving unutilized input VAT of ₱16,890,978.40 and ₱43,905,831.99 for the 3rd and 4th quarters of 2011, respectively. The total input tax for the 3rd and 4th quarters of 2011 in the amount of ₱64,108,640.77 was reflected in the VAT Return for the 2nd quarter of 2013 as "VAT Refund/TCC Claimed", hence, it could no longer be carried over to the succeeding quarters, being already the subject of an administrative claim for refund to be filed within the prescribed period. The ICPA added that the word "zero-rated" was imprinted on petitioner's final invoices in compliance with the BIR requirement.

After petitioner rested, respondent opted not to present any evidence in support of her defense. Hence, the consolidated cases were deemed submitted for decision[20] after the parties filed their respective memoranda.

THE ISSUE

The lone issue for the resolution of the Court is as follows, to wit:

> Whether petitioner is entitled to the refund of its alleged excess input taxes for the 3rd and 4th quarters of 2011 in the respective amounts of ₱16,890,978.40 and ₱43,905,831.61.

THE RULING OF THE COURT

Under Section 112 (A) of the NIRC of 1997, as amended,[21] petitioner must satisfy the following requisites to

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[20] Minutes of the hearing on February 2, 2015, *ibid.*, docket, p. 308.

[21] "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

be entitled to the refund of its alleged unutilized excess input taxes incurred during the 3rd and 4th quarters of 2011, *viz*:

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 are 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.

The timeliness of the filing of the instant Petitions for Review must first be determined as it will dictate the Court's jurisdiction over the case.

Section 112 (A) of the NIRC of 1997, as amended, provides that a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply with respondent for refund/tax credit of creditable input tax due or paid attributable to such sales within two (2) years from the close of the taxable quarter when the relevant sales were made. From the filing of such application, respondent has one hundred twenty (120) days to act on the claim, pursuant to Section 112(C) of the same Tax Code. From receipt of the

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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."

adverse decision or expiration of the period granted for respondent to act, the taxpayer has thirty (30) days to appeal the adverse decision or inaction of respondent to this Court.

The Supreme Court elucidated on the application of the prescriptive periods under Section 112 (A) and (C) of the NIRC of 1997, as amended, in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, Philex Mining Corporation v. Commissioner of Internal Revenue*[22], in this wise:

> "This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period."

The present claims cover the 3rd and 4th quarters of 2011 which closed on September 30, 2011 and December 31, 2011, respectively. Hence, petitioner had two years from September 30, 2011 and December 31, 2011 or until September 30, 2013 and December 31, 2013, respectively, within which to file its administrative claims for refund/tax credit.

Evidence shows that petitioner seasonably filed its Letter to the DOF-OSS with the supporting documents and Application for Refund for the 3rd and 4th quarters of 2011 on September 5, 2013.

[22] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

Applying Section 112 (C) of the same Code for petitioner's action for judicial intervention, respondent had 120 days from September 5, 2013, to grant or deny petitioner's administrative claims. Since the 120-day period lapsed on January 3, 2014 without any action on the part of respondent, petitioner had 30 days or until February 2, 2014 to file its judicial claims before this Court. Hence, the two (2) separate Petitions for Review filed by petitioner on January 6, 2014 and January 30, 2014 were also timely filed.

For the first and third requisites, 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 invoking Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.[23]

To qualify as VAT zero-rated sale of export goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following requisites must be complied with, to wit:

1. that there was sale and actual shipment of goods from the Philippines to a foreign country;

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[23] "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* –

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* – The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

2. that the sale was made by a VAT-registered person;

3. that it was paid in acceptable foreign currency or its equivalent in goods or services; and

4. that the payment was accounted for in accordance with the rules and regulations of the BSP.

It is undisputed that petitioner is a VAT-registered taxpayer with Application for Zero Rate approved on April 12, 1988[24]. It is engaged in the mining business, which includes the exploration, development and operation of mining properties for commercial production, and marketing of its mine products, consisting of copper ore concentrates and gold bullions[25].

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 RR No. 16-05, as amended, further mandate that a VAT taxpayer, like petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain all the information required under the following provisions of the law, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number, *viz*:

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

[24] Par. 4, JSFI, CTA Case No. 8753, docket, p. 225; Exhibits "P-16-k" and "P-16-l".
[25] Par. 3, *ibid.*

(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***. -

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)*

Sections 237 and 238 of the NIRC of 1997, as amended,[26] also require that the pertinent invoices or receipts supporting the export sales must be duly registered with the BIR.

In addition, Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1),

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26 "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."

and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, provides that any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1.) Sales Invoice as proof of sale of goods;

2.) Export Declaration and Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and

3.) Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

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

With the presentation of Export Declarations[27], Bills of Lading[28], Provisional Invoices[29] and Final Invoices[30] of the subject export sales, petitioner was able to prove that it sold and shipped mineral products to Pan Pacific Copper Co., Ltd. and Louise Dreyfus Commodities Metals Suisse SA for the 3rd and 4th quarters of 2011. The Bills of Lading indicated that the ports of discharge of copper concentrates shipments were in Japan and Korea.

As to the discrepancies on dates appearing in the final invoices submitted by petitioner which were later than the dates of shipment indicated in the bills of lading and provisional invoices, witness, Ms. Eileen C. Rodriguez explained as follows:

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[27] Exhibits "P-7-a" to "P-7-s".
[28] Exhibits "P-7-t" to "P-7-ll".
[29] Exhibits "P-7-mm" to "P-7-eee".
[30] Exhibits "P-7-fff" to "P-7-xxx".

"Q. No. 26. - Please explain why for each shipment of mineral products to Japanese buyer Petitioner issues two invoices to the buyer, namely, a provisional invoice and a final invoice, and why the final invoice is issued much later than the date of shipment.

A. No. 26. - Clause 9 of the Agreement requires the Buyer to pay the Seller the price of each shipment of copper concentrates in two stages: **First**, a **provisional payment** at the time of shipment equal to 90% of the provisional price as determined by the Seller based on shipped weight and the Seller's provisional assay, and, **Second**, a **final payment** covering the balance of the concentrate value (after deducting the 90% provisional payment from the final concentrate value) upon presentation of the final invoice after all data necessary to determine the final settlement (including weights and moisture content, final assays for copper, gold, silver contents and impurities [which are done in Buyer's smelting/refining plant at the port of discharge], and final prices for payable copper, payable gold and payable silver) are available.

On the basis of the above manner of payment, Petitioner as Seller, issued Provisional Invoices to the Buyer at the time of each shipment of copper concentrates during the quarter in question covering the 90% provisional payments. After all the data necessary to determine the final settlement (such as weight, moisture, final assays and final prices) are available, Petitioner issued to the Buyer the Final Invoices reflecting the Final Concentrate Value and the Final Balance Due Philex (after deducting the 90% provisional payment). The payments received by Petitioner under the Final Invoices are only the final balances since the bulk of the payments were already received as 90% provisional payments under the provisional invoices issued at the time of each shipment.

The period and procedure of weighing, sampling, moisture determination and assaying of each copper concentrate shipment are provided for in Clause 10 of the Long Term Sales Agreement. In Clause 10.1, it is provided that all weighing, sampling, sample preparation and determination of moisture content shall be made by receiving smelter after receipt of the concentrates. Clause 10.4 provides that from the samples taken, assay for copper, gold and silver shall be made independently by the respective assayers of Seller and Buyer, and the parties shall exchange the result of the assays simultaneously on a lot by lot basis within forty (40) days from the date samples have been made available.

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

It is the above intricate and long procedure provided in Clause 10, for weighing, sampling, sample preparation, determination of moisture content, independent assaying by the respective assays of Seller and Buyer, designation of and referral to an independent umpire for settlement of the difference between Seller and Buyer assays, to arrive at the price or final concentrate value, that accounts for the lag or delay in the issuance by Petitioner of the Final Invoices, because a Final Invoice cannot be issued until after a final settlement as to weight, moisture content, assay and price is arrived at.[31]"

Therefore, the considered dates of the sale transactions were the shipment dates indicated in the Bills of Lading. Since the Bills of Lading were all dated within the 3rd and 4th quarters of 2011, they were considered valid.

To prove compliance with Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which requires that the sales be paid in acceptable foreign currency or their equivalent in goods or services duly accounted for in accordance with the rules and regulations of the BSP, petitioner presented ICPA Albert G. Alba whose Consolidated Report dated June 20, 2014[32] showed that petitioner's zero-rated sales for the 3rd and 4th quarters of 2011 in the amounts of ₱3,262,099,331.45 and ₱5,532,108,438.50 have corresponding US dollar values of $76,635,115.00 and $127,091,084.00, respectively, consisting of the following:

	3rd Quarter	4th Quarter	Total
Provisional billings for direct export sales of copper			
Pan Pacific Copper Co., Ltd.	$ 55,171,373.00	$ 103,622,811.00	$ 158,794,184.00
Louis Dreyfus Commodities Metals Suisse	22,885,241.00	22,992,463.00	45,877,704.00
Sub-total	78,056,614.00	126,615,274.00	204,671,888.00
Adjustment to previous quarters' provisional billings			
Pan Pacific Copper Co., Ltd.	(1,571,099.00)	390,967.00	(1,180,132.00)
Louis Dreyfus Commodities Metals Suisse	149,600.00	84,843.00	234,443.00
Sub-total	(1,421,499.00)	475,810.00	(945,689.00)
Total	**$76,635,115.00**	**$127,091,084.00**	**$203,726,199.00**

Per petitioner's Schedule of Export Sales[33], the zero-rated sales in the amounts of US$76,635,115.00 and US$127,091,084.00 for the 3rd and 4th quarters of 2011, respectively, are broken down as follows:

Third Quarter of 2011							
Provisional Invoice			**90% Provisional Drawing**	**Final Invoice**			**Amount Recorded in the General Ledger**
Exhibit	**Invoice No.**	**Amount (in US$)**		**Exhibit**	**Invoice No.**	**Amount (in US$)**	

[31] Exhibit "P-1", pp. 7-8.
[32] Exhibit "P-6".
[33] Exhibit "P-7".

Current Quarter's Shipments							
P-7-mm	2619	26,619,871.80	23,957,884.62	P-7-fff	2628	26,656,401.97	27,793,777.00
P-7-nn	2620	27,688,059.32	24,919,253.39	P-7-ggg	2630	26,462,598.32	27,377,596.00
P-7-oo	2622	22,476,014.35	20,228,412.92	P-7-hhh	2633	21,430,515.99	22,885,241.00
		76,783,945.47	**69,105,550.93**			**74,549,516.28**	**78,056,614.00**
Catch-up Adjustments to Prior Quarter's Shipments							
P-7-pp	2607	26,902,422.70	24,212,180.43	P-7-iii	2617	26,616,520.01	(46,582.00)
P-7-qq	2611	27,256,592.42	24,530,933.18	P-7-jjj	2618	26,367,889.81	(670,649.00)
P-7-rr	2613	25,212,286.17	22,691,057.55	P-7-kkk	2621	24,781,502.23	209,450.00
P-7-ss	2614	24,624,740.90	22,162,266.81	P-7-lll	2623	25,124,425.19	657,381.00
P-7-tt	2615	25,675,701.17	23,108,131.05	P-7-mmm	2624	25,500,115.01	(768,264.00)
P-7-uu	2616	25,551,773.39	22,996,596.05	P-7-nnn	2625	25,143,090.57	(802,835.00)
		155,223,516.75	**139,701,165.07**			**153,533,542.82**	**(1,421,499.00)**
Total		**232,007,462.22**	**208,806,716.00**			**228,083,059.10**	**76,635,115.00**

Fourth Quarter of 2011							
Provisional Invoice			**90% Provisional Drawing**	**Final Invoice**			**Amount Recorded in the General Ledger**
Exhibit	**Invoice No.**	**Amount (in US$)**		**Exhibit**	**Invoice No.**	**Amount (in US$)**	
Current Quarter's Shipments							
P-7-vv	2626	24,893,171.00	22,403,853.90	P-7-ooo	2634	24,548,457.32	25,223,867.00
P-7-ww	2627	24,647,469.24	22,182,722.32	P-7-ppp	2635	26,558,589.37	27,616,104.00
P-7-xx	2629	24,305,698.08	21,875,128.27	P-7-qqq	2638	24,275,025.29	24,898,959.00
P-7-yy	2631	26,582,495.03	23,924,349.33	P-7-rrr	2642	25,885,793.66	25,883,881.00
P-7-zz	2632	22,143,680.12	19,929,312.11	P-7-sss	2639	23,852,921.78	22,992,463.00
		122,572,513.47	**110,315,365.93**			**125,120,787.42**	**126,615,274.00**
Catch-up Adjustments to Prior Quarter's Shipments							
P-7-aaa	2615	25,675,701.17	23,108,131.05	P-7-ttt	2624	25,500,115.01	96,243.00
P-7-bbb	2616	25,551,773.39	22,996,596.05	P-7-uuu	2625	25,143,090.57	(114,796.00)
P-7-ccc	2619	26,619,871.80	23,957,884.62	P-7-vvv	2628	26,656,401.97	95,700.00
P-7-ddd	2620	27,688,059.32	24,919,253.39	P-7-www	2630	26,462,598.32	313,820.00
P-7-eee	2622	22,476,014.35	20,228,412.92	P-7-xxx	2633	21,430,515.99	84,843.00
		128,011,420.03	**115,210,278.03**			**125,192,721.86**	**475,810.00**
Total		**250,583,933.50**	**225,525,643.96**			**250,313,509.28**	**127,091,084.00**

To ascertain that the payment received by petitioner in foreign currency is accounted for in accordance with the BSP rules and regulations, the Court considered petitioner's Summary of Sales and Remittances[34], as well as the Certificates of Inward Remittances issued by local banks and the passbook pages indicating the amounts credited and dates of remittances,[35] which showed that ninety percent (90%) of the export sales per provisional invoices for the 3rd and 4th quarters of 2011 correspond to the inward remittances received by petitioner. However, for Provisional Invoice No. 2632 with Final Invoice No. 2639, no inward remittance have been received, thus, it remains collectible

[34] Exhibit "P-8".
[35] Exhibits "P-8-a" to "P-8-dd".

or receivable as of the end of the 4th quarter of 2011. Moreover, petitioner did not submit any documentary evidence to establish that this remaining receivable was subsequently collected and accounted for in acceptable foreign currency. Consequently, it shall be disregarded in computing the valid zero-rated sales.

Thus, out of the 90% Provisional Drawing in the total amount of US$179,420,916.86 for the 3rd and 4th quarters' shipments, only US$159,491,544.32 has a corresponding inward remittance, computed as follows:

Current Quarter's Shipments (in US$)					
Prov. Invoice No.	**Final Invoice No.**	**Amount Recorded in the General Ledger**	**90% Provisional Drawing**	**Actual Remittance**	**Difference**
Third Quarter of 2011					
2619	2628	27,793,777.00	23,957,884.62	23,957,884.62	-
2620	2630	27,377,596.00	24,919,253.39	24,919,245.39	8.00
2622	2633	22,885,241.00	20,228,412.92	20,228,372.92	40.00
	sub-total	**78,056,614.00**	**69,105,550.93**	**69,105,502.93**	**48.00**
Fourth Quarter of 2011					
2626	2634	25,223,867.00	22,403,853.90	22,403,848.90	5.00
2627	2635	27,616,104.00	22,182,722.32	22,182,714.89	7.43
2629	2638	24,898,959.00	21,875,128.27	21,875,128.27	-
2631	2642	25,883,881.00	23,924,349.33	23,924,349.33	-
2632	2639	22,992,463.00	19,929,312.11		19,929,312.11
	sub-total	**126,615,274.00**	**110,315,365.93**	**90,386,041.39**	**19,929,324.54**
Total		**204,671,888.00**	**179,420,916.86**	**159,491,544.32**	**19,929,372.54**

With respect to the Catch-up Adjustments to Prior Quarter's Shipments for the 3rd and 4th quarters of 2011, the final balance due per final invoices (net of 90% provisional drawings) matches the inward remittances, except for Final Invoice No. 2633 (Provisional Invoice No. 2622) where no inward remittance has yet been received, to wit:

Catch-up Adjustments to Prior Quarter's Shipments (in US$)						
Prov. Invoice No.	**Final Invoice No.**	**Amount Recorded in the General Ledger**	**Amount per Final Invoice (a)**	**90% Provisional Drawing (b)**	**Balance-should be remitted (a-b)**	**Actual Remittance**
Third Quarter of 2011						
2607	2617	(46,582.00)	26,616,520.01	24,212,180.43	2,404,339.58	2,404,308.08
2611	2618	(670,649.00)	26,367,889.81	24,530,933.18	1,836,956.63	1,836,936.63
2613	2621	209,450.00	24,781,502.23	22,691,057.55	2,090,444.68	2,090,411.68
2614	2623	657,381.00	25,124,425.19	22,162,266.81	2,962,158.38	3,114,623.85

2615	2624	(768,264.00)	25,500,115.01	23,108,131.05	2,391,983.96	
2616	2625	(802,835.00)	25,143,090.57	22,996,596.05	2,146,494.52	
		(1,421,499.00)	**153,533,542.82**	**139,701,165.07**	**13,832,377.75**	**9,446,280.24**
Fourth Quarter of 2011						
2615	2624	96,243.00	25,500,115.01	23,108,131.05	2,391,983.96	2,391,978.96
2616	2625	(114,796.00)	25,143,090.57	22,996,596.05	2,146,494.52	2,146,487.09
2619	2628	95,700.00	26,656,401.97	23,957,884.62	2,698,517.35	2,698,517.35
2620	2630	313,820.00	26,462,598.32	24,919,253.39	1,543,344.93	1,543,336.93
2622	2633	84,843.00	21,430,515.99	20,228,412.92	1,202,103.07	
sub-total		**475,810.00**	**125,192,721.86**	**115,210,278.03**	**9,982,443.83**	**8,780,320.33**
Total		**(945,689.00)**	**278,726,264.68**	**254,911,443.10**	**23,814,821.58**	**18,226,600.57**

In sum, the amount of US$41,432,852.40 representing the difference between the export sales as recorded in the general ledger and the corresponding inward remittances for the 3rd and 4th quarters' shipments shall be disallowed as zero-rated sales, as shown below:

		Amount Recorded in the General Ledger (in US$)			**Inward Remittance (in US$)**			
Prov. Inv. No.	**Final Inv. No.**	**Current Quarter**	**After the Current Quarter (catch-up adjustment)**	**Total**	**Current Quarter**	**After the Current Quarter**	**Total**	**Difference**
Third Quarter of 2011								
2619	2628	27,793,777.00	95,700.00	27,889,477.00	23,957,884.62	2,698,517.35	26,656,401.97	1,233,075.03
2620	2630	27,377,596.00	313,820.00	27,691,416.00	24,919,245.39	1,543,336.93	26,462,582.32	1,228,833.68
2622	2633	22,885,241.00	84,843.00	22,970,084.00	20,228,372.92		20,228,372.92	2,741,711.08
sub-total		**78,056,614.00**	**494,363.00**	**78,550,977.00**	**69,105,502.93**	**4,241,854.28**	**73,347,357.21**	**5,203,619.79**
Fourth Quarter of 2011								
2626	2634	25,223,867.00		25,223,867.00	22,403,848.90		22,403,848.90	2,820,018.10
2627	2635	27,616,104.00		27,616,104.00	22,182,714.89		22,182,714.89	5,433,389.11
2629	2638	24,898,959.00		24,898,959.00	21,875,128.27		21,875,128.27	3,023,830.73
2631	2642	25,883,881.00		25,883,881.00	23,924,349.33		23,924,349.33	1,959,531.67
2632	2639	22,992,463.00		22,992,463.00			-	22,992,463.00
sub-total		**126,615,274.00**	**-**	**126,615,274.00**	**90,386,041.39**	**-**	**90,386,041.39**	**36,229,232.61**
Catch-up Adjustments to Prior Quarter's Shipments								
Third Quarter of 2011								
2607	2617	(46,582.00)		(46,582.00)	2,404,308.08		2,404,308.08	
2611	2618	(670,649.00)		(670,649.00)	1,836,936.63		1,836,936.63	
2613	2621	209,450.00		209,450.00	2,090,411.68		2,090,411.68	
2614	2623	657,381.00		657,381.00	3,114,623.85		3,114,623.85	
2615	2624	(768,264.00)	96,243.00	(672,021.00)		2,391,978.96	2,391,978.96	
2616	2625	(802,835.00)	(114,796.00)	(917,631.00)		2,146,487.09	2,146,487.09	
sub-total		**(1,421,499.00)**	**(18,553.00)**	**(1,440,052.00)**	**9,446,280.24**	**4,538,466.05**	**13,984,746.29**	**-**
Total		**203,250,389.00**	**475,810.00**	**203,726,199.00**	**168,937,824.56**	**8,780,320.33**	**177,718,144.89**	**41,432,852.40**

Accordingly, petitioner's export sales for the 3rd and 4th quarters of 2011 with the net adjusted amounts of US$71,431,495.21 and US$90,861,851.39, respectively, qualify for VAT zero-rating, as follows:

	3rd Quarter	**4th Quarter**	**Total**
Zero-rated Sales	US$ 76,635,115.00	US$ 127,091,084.00	US$ 203,726,199.00
Less: Sales without	5,203,619.79	36,229,232.61	41,432,852.40

corresponding inward remittance			
Adjusted Zero-rated Sales	**US$71,431,495.21**	**US$90,861,851.39**	**US$162,293,346.60**

With the finding that petitioner had VAT zero-rated sales for the 3rd and 4th quarters of 2011 in the total amount of US$162,293,346.60, the Court shall now 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 Returns for the 3rd and 4th quarters of 2011 reflected input VAT on importations of goods and on domestic purchases of services in the total amount of ₱64,108,640.77, broken down as follows:

Input VAT on:	**3rd Quarter**	**4th Quarter**	**Total**
Importations of Goods (other than Capital Goods)	₱ 18,915,887.00	₱ 42,702,710.00	₱ 61,618,597.00
Domestic Purchases Services	544,085.41	1,945,958.36	2,490,043.77
Total Input VAT	**₱19,459,972.41**	**₱44,648,668.36**	**₱64,108,640.77**

Based on the supporting documents, the ICPA noted the following findings:

	Exhibit	**3rd Quarter**	**4th Quarter**	**Total**
A. Input Taxes on Importations				
1. Supported by original SSDTs, BDAs or IEIRDs (Exhibit P-9)				
- Dated in the current quarter	P-9-a to P-9-qq; P-9-bbbbbbbb to P-9-rrrrrrrrr; P-9-ttt to P-9-mmmmmmm; P-9-uuuuuuuuuu to P-9-nnnnnnnnnnnnn	₱5,294,588.00	₱21,596,195.00	₱26,890,783.00
- Dated second quarter of 2011	P-9-rr to P-9-sss; P-9-sssssssss to P-9-ttttttttt	3,911,312.00		3,911,312.00
- Dated third quarter of 2011	P-9-nnnnnn to P-9-aaaaaaa; P-9-ppppppppppppp to P-9-bbbbbbbbbbbbbb		11,208,248.00	11,208,248.00
2. Supported by original BCORs only (Exhibit P-10)				
- Dated in the current quarter	P-10-a to P-10-f	8,810.00	177,218.00	186,028.00
3. Supported by original SSDTs only (Exhibit P-11)				
- Dated in the current quarter	P-11-a to P-11-l; P-11-y to P-11-cc	3,752,367.00	6,260,528.00	10,012,895.00
- Dated second quarter of 2011	P-11-m to P-11-x	5,329,268.00		5,329,268.00
- Dated third quarter of 2011	P-11-dd to P-11-ll		742,909.00	742,909.00
4. Supported by original IEIRDs only without bank validation of payments (Exhibit P-12)				
- Dated in the current quarter	P-12-a to P-12-c; P-12-f to P-12-m	321,189.00	1,600,747.00	1,921,936.00

- Dated second quarter of 2011	P-12-d to P-12-e	41,334.00		41,334.00
- Dated third quarter of 2011	P-12-n to P-12-q		805,171.00	805,171.00
5. No supporting documents presented (Exhibit "P-13")		257,019.00	311,694.00	568,713.00
subtotal		**₱18,915,887.00**	**₱42,702,710.00**	**₱61,618,597.00**
B. Input Taxes on Domestic Purchases				
1. Supported by original VAT official receipts/invoices that are in the name of the petitioner (Exhibit P-14)				
- Dated in the current quarter	P-14-a to P-14-bbb; P-14-xxxx to P-14-fffffff	₱254,245.59	₱ 177,424.06	₱ 431,669.65
- Dated second quarter of 2011	P-14-ccc to P-14-wwww	255,613.34	979,071.42	1,234,684.76
- Dated third quarter of 2011	P-14-ggggggg to P-14-yyyyyyy		193,899.96	193,899.96
2. No supporting documents presented (Exhibit P-15)		34,226.48	595,562.92	629,789.40
subtotal		**544,085.41**	**1,945,958.36**	**2,490,043.77**
Total Input VAT accounted by the ICPA		**₱19,459,972.41**	**₱44,648,668.36**	**₱64,108,640.77**

From the above findings, petitioner's claim in the amount of ₱14,442,208.16 shall be disallowed as stated below:

	Exhibit	3rd Quarter	4th quarter	Total
A. Input Taxes on Importations				
1. Supported by original SSDTs, BDAs or IEIRDs (Exhibit P-9)				
- Dated second quarter of 2011	P-9-rr to P-9-sss; P-9-ssssssss to P-9-ttttttttt	₱ 3,911,312.00		₱ 3,911,312.00
2. Supported by original SSDTs only (Exhibit P-11)				
- Dated second quarter of 2011	P-11-m to P-11-x	5,329,268.00		5,329,268.00
3. Supported by original IEIRDs only without bank validation of payments (Exhibit P-12)				
- Dated in the current quarter	P-12-a to P-12-c; P-12-f to P-12-m	321,189.00	1,600,747.00	1,921,936.00
- Dated second quarter of 2011	P-12-d to P-12-e	41,334.00		41,334.00
- Dated third quarter of 2011	P-12-n to P-12-q		805,171.00	805,171.00
4. No supporting documents presented (Exhibit "P-13")		257,019.00	311,694.00	568,713.00
subtotal		**₱9,860,122.00**	**₱2,717,612.00**	**₱12,577,734.00**
B. Input Taxes on Domestic Purchases				
1. Supported by original VAT official receipts/invoices that are in the name of the petitioner (Exhibit P-14)				
- Dated second quarter of 2011	P-14-ccc to P-14-wwww	₱ 255,613.34	₱ 979,071.42	₱ 1,234,684.76
2. No supporting documents presented (Exhibit P-15)		34,226.48	595,562.92	629,789.40
subtotal		**289,839.82**	**1,574,634.34**	**1,864,474.16**
Total Input VAT accounted by the ICPA		**₱10,149,961.82**	**₱4,292,246.34**	**₱14,442,208.16**

Upon further review of petitioner's supporting documents, the Court finds that the following input taxes on domestic purchases of services in the total amount of ₱528,854.82 should also 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 RR No. 16-05, as amended, to wit:

	Exhibit	3rd Quarter	4th Quarter	Total
Supported by documents other than VAT Official Receipts				
Association of International Shipping Lines, Inc.	"P-14-a"	₱ 18.75	-	₱ 18.75
Association of International Shipping Lines, Inc.	"P-14-f"	2.68	-	2.68
Miascor Logistics Corporation	"P-14-r"	256.53	-	256.53
Association of International Shipping Lines, Inc.	"P-14-s"	5.36	-	5.36
Asian Terminal, Inc.	"P-14-v"	1,804.97	-	1,804.97
Association of International Shipping Lines, Inc.	"P-14-w"	10.71	-	10.71
Association of International Shipping Lines, Inc.	"P-14-z"	2.68	-	2.68
Asian Terminal, Inc.	"P-14-aa"	451.24	-	451.24
Asian Terminal, Inc.	"P-14-cc"	451.24	-	451.24
Association of International Shipping Lines, Inc.	"P-14-dd"	2.68	-	2.68
Vanguard Logistics Services Phils., Inc.	"P-14-eeeee"	-	₱ 477.30	477.30
Association of International Shipping Lines, Inc.	"P-14-ggggg"	-	32.14	32.14
Asian Terminal, Inc.	"P-14-jjjjj"	-	2,002.64	2,002.64
Asian Terminal, Inc.	"P-14-mmmmm"	-	451.24	451.24
Association of International Shipping Lines, Inc.	"P-14-nnnnn"	-	2.68	2.68
Asian Terminal, Inc.	"P-14-sssss"	-	451.24	451.24
Miascor Logistics Corporation	"P-14-uuuuu"	-	1,273.43	1,273.43
Asian Terminal, Inc.	"P-14-bbbbbb"	-	902.48	902.48
Association of International Shipping Lines, Inc.	"P-14-cccccc"	-	5.36	5.36
Association of International Shipping Lines, Inc.	"P-14-jjjjjj"	-	16.07	16.07
Association of International Shipping Lines, Inc.	"P-14-kkkkkk"	-	16.07	16.07
Asian Terminal, Inc.	"P-14-ggggggg"	-	451.24	451.24
Association of International Shipping Lines, Inc.	"P-14-hhhhhhh"	-	2.68	2.68
Asian Terminal, Inc.	"P-14-ppppppp"	-	2,002.64	2,002.64
Association of International Shipping Lines, Inc.	"P-14-ttttttt"	-	2.68	2.68
Asian Terminal, Inc.	"P-14-yyyyyyy"	-	451.24	451.24
Association of International Shipping Lines, Inc.	"P-14-zzzzzzz"	-	2.68	2.68
Association of International Shipping Lines, Inc.	"P-14-dddddddd"	-	8.04	8.04
Miascor Logistics Corporation	"P-14-ffffffff"	-	120.98	120.98
Asian Terminal, Inc.	"P-14-gggggggg"	-	1,804.97	1,804.97
Asian Terminal, Inc.	"P-14-kkkkkkkk"	-	2,002.64	2,002.64
Association of International Shipping Lines, Inc.	"P-14-llllllll"	-	5.36	5.36
Asian Terminal, Inc.	"P-14-nnnnnnnn"	-	451.24	451.24
Asian Terminal, Inc.	"P-14-oooooooo"	-	902.48	902.48
Association of International Shipping Lines, Inc.	"P-14-vvvvvvvv"	-	2.68	2.68
Association of International Shipping Lines, Inc.	"P-14-yyyyyyyy"	-	2.68	2.68
subtotal		**₱ 3,006.84**	**₱ 13,844.88**	**₱ 16,851.72**
Supported by VAT Official Receipts but the input VAT amount is not separately indicated (with noted written computation only of input VAT claim).				
Seahawk Transport, Inc.	"P-14-d"	₱ 612.00	-	₱ 612.00
PTC Agency Transport, Inc.	"P-14-e"	444.00	-	444.00
Kuehne Nagel, Inc.	"P-14-m"	287.43	-	287.43
DSL Trading General Services	"P-14-n"	4,285.71	-	4,285.71
The Manila Times Publishing Corp.	"P-14-o"	6,269.40	-	6,269.40
Mel Printing Services	"P-14-p"	1,660.71	-	1,660.71
Safeway Warehousing, Inc.	"P-14-u"	160.00	-	160.00

DHL Express (Philippines) Corp.	"P-14-ff"	33.60	-	33.60
Crowne Plaza Galleria Manila	"P-14-kk"	9,410.76	-	9,410.76
Crowne Plaza Galleria Manila	"P-14-ll"	10,858.57	-	10,858.57
Crowne Plaza Galleria Manila	"P-14-mm"	8,380.58	-	8,380.58
Crowne Plaza Galleria Manila	"P-14-nn"	43,434.28	-	43,434.28
Lexmedia Digital	"P-14-oo"	34,473.21	-	34,473.21
Hyundai Pasig	"P-14-pp"	1,656.41	-	1,656.41
Philippine Long Distance Telephone Co.	"P-14-rr"	384.00	-	384.00
Konekit Network Technologies, Inc.	"P-14-ss"	19,285.71	-	19,285.71
Jaq Travel	"P-14-tt"	1,283.16	-	1,283.16
Philippine Long Distance Telephone Co.	"P-14-uu"	1,518.00	-	1,518.00
Xellex Corporation	"P-14-ww"	64,285.71	-	64,285.71
Jaq Travel	"P-14-xx"	2,869.92	-	2,869.92
Jaq Travel	"P-14-zz"	633.84	-	633.84
Mel Printing Services	"P-14-aaa"	455.36	-	455.36
Crowne Plaza Galleria Manila	"P-14-bbb"	21,717.14	-	21,717.14
Goldwin CFS, Inc.	"P-14-yyyy"	-	₱ 1,093.20	1,093.20
Jaq Travel	"P-14-ddddd"	-	842.76	842.76
Realsan Enterprises	"P-14-fffff"	-	1,875.00	1,875.00
DHL Express (Philippines) Corp.	"P-14-lllll"	-	33.60	33.60
Mel Printing Services	"P-14-ttttt"	-	535.71	535.71
RV Marzan Int'l Forwarders, Inc.	"P-14-zzzzz"	-	573.29	573.29
FC Weishan Foods, Inc.	"P-14-eeeeee"	-	6,251.40	6,251.40
Safeway Warehousing, Inc.	"P-14-gggggg"	-	11,410.18	11,410.18
EDSA Shangrila	"P-14-llllll"	-	9,042.00	9,042.00
EDSA Shangrila	"P-14-ssssss"	-	10,248.00	10,248.00
Crowne Plaza Galleria Manila	"P-14-tttttt"	-	43,434.28	43,434.28
The Plaza, Inc.	"P-14-uuuuuu"	-	2,142.86	2,142.86
Queen J Catering and Food Service	"P-14-vvvvvv"	-	7,152.60	7,152.60
Philippine Long Distance Telephone Co.	"P-14-wwwwww"	-	18,812.50	18,812.50
Metro Pacific Investments Corporation	"P-14-xxxxxx"	-	669.00	669.00
Quantuvis Resources Corporation	"P-14-yyyyyy"	-	3,448.85	3,448.85
The Plaza, Inc.	"P-14-aaaaaaa"	-	2,142.86	2,142.86
Legend Hotels International Corp. Pasay	"P-14-bbbbbbb"	-	3,127.23	3,127.23
Forwarding Dynamics Engineering	"P-14-ccccccc"	-	7,450.97	7,450.97
Seahawk Transport, Inc.	"P-14-mmmmmmm"	-	408.00	408.00
Ford Global City	"P-14-ooooooo"	-	146,035.71	146,035.71
Schenker Philippines, Inc.	"P-14-sssssss"	-	246.24	246.24
Citadel Shipping Service, Inc.	"P-14-wwwwwww"	-	219.36	219.36
Seahawk Transport, Inc.	"P-14-hhhhhhh"	-	408.00	408.00
subtotal		**₱234,399.50**	**₱277,603.60**	**₱512,003.10**
Total Disallowances per this Court's Findings		**₱237,406.34**	**₱291,448.48**	**₱528,854.82**

Out of petitioner's reported input VAT for the 3rd and 4th quarters of 2011 in the amount of ₱64,108,640.77, only the amount of ₱49,137,577.79 represents petitioner's valid input tax, as computed below:

	3rd Quarter	4th Quarter	Total
Input VAT from Current Transactions	₱ 19,459,972.41	₱ 44,648,668.36	₱ 64,108,640.77
Less: Disallowances			
a) Based on ICPA Report	10,149,961.82	4,292,246.34	14,442,208.16
b) Per this Court's findings	237,406.34	291,448.48	528,854.82
Valid Input VAT	**₱9,072,604.25**	**₱40,064,973.54**	**₱49,137,577.79**

However, a portion of the ₱49,137,577.79 valid input VAT shall be applied against petitioner's reported output VAT liability for the 3rd and 4th quarters of 2011 in the amounts of ₱2,568,994.01 and ₱742,836.37, respectively. Hence, for the 3rd and 4th quarters of 2011, only the remaining input VAT of ₱45,825,747.41 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱8,794,207,769.95 (with US$ equivalent of US$203,726,199.00) and only the input VAT of ₱34,174,775.19 is attributable to the valid zero-rated sales of ₱6,995,696,114.03 (with US$ equivalent of US$162,293,346.60), as computed below:

	3rd Quarter	4th Quarter	Total
Valid Input VAT	₱ 9,072,604.25	₱ 40,064,973.54	₱ 49,137,577.79
Less: Output VAT	2,568,994.01	742,836.37	3,311,830.38
Excess Input VAT attributable to zero-rated sales	**₱ 6,503,610.24**	**₱ 39,322,137.17**	**₱ 45,825,747.41**
Multiply by: Allocation Factor *(Valid Zero-Rated Sales ÷ Total Zero-Rated Sales)*			
Total Zero-Rated Sales in Php	3,262,099,331.45	5,532,108,438.50	8,794,207,769.95
x Valid Zero-Rated Sales in US$	71,431,495.21	90,861,851.39	162,293,346.60
÷ Total Zero-Rated Sales in US$	76,635,115.00	127,091,084.00	203,726,199.00
= Valid Zero-Rated Sales in Php	**3,040,598,722.52**	**3,955,097,391.51**	**6,995,696,114.03**
Allocation Factor	93.20987541%	71.49348997%	
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱ 6,062,007.00**	**₱ 28,112,768.19**	**₱ 34,174,775.19**

Finally, although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns from the 1st quarter of 2012 to the 2nd quarter of 2013[36], the same remained unutilized since it was deducted in its Quarterly VAT Return for the 2nd quarter of 2013, as "VAT Refund/TCC claimed"[37] from the total available input tax of

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[36] Exhibits "P-16-e" to "P-16-j".
[37] Exhibit "P-16-j (1/2)", line 23D.

₱257,456,430.96[38]. Hence, the claimed input taxes for the 3rd and 4th quarters of 2011 was not carried over or utilized in the succeeding 3rd quarter of 2013.

In fine, petitioner is entitled to a refund/tax credit in the amount of ₱34,174,775.19, representing its unutilized excess input VAT for the 3rd and 4th quarters of 2011 attributable to its zero-rated receipts for the same period.

WHEREFORE, the consolidated Petitions for Review filed by Philex Mining Corporation on January 6, 2014 and January 30, 2014 are **PARTIALLY GRANTED**.

Accordingly, respondent Commissioner of Internal Revenue is **DIRECTED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱34,174,775.19, representing petitioner's unutilized excess input VAT for the 3rd and 4th quarters of 2011 attributable to its zero-rated sales.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[38] Exhibit "P-16-j (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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice