REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE Nos. 7933 & 7968**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 1 7 2011 2:40 p.m.

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DECISION

CASTAÑEDA, JR., J.:

THE CASE

This case is a consolidation of two (2) Petitions for Review, separately filed by Petitioner, Philex Mining Corporation against the respondent Commissioner of Internal Revenue (CIR) both seeking the refund and/or issuance of Tax Credit Certificate (TCC) in favor of its alleged unutilized input value-added tax (VAT) paid on purchases on goods and services attributable to zero-rated sales for the second quarter of 2007 in CTA Case No. 7933 and third quarter of 2007 in CTA Case No. 7968, detailed as follows:

CTA Case No.	Period Covered	Amount of Claim
7933	Second Quarter 2007	**P18,412,322.93**
7968	Third Quarter 2007	**P21,846,677.68**
	TOTAL	**P40,259,000.61**

THE FACTS

Petitioner is a domestic corporation engaged in the business of mining which includes exploration, development, and operation of mining properties for commercial production, and the marketing of mine products.[1] Its principal office address is located at Brixton cor. Fairlane Sts., Pasig City.[2]

Petitioner is VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1997, and under BIR Form No. 2303 as of January 31, 1997. Petitioner had its Application for Zero-Rate, pursuant to Sec. 4.100-3 of Revenue Regulations No. 7-95, approved effective April 12, 1998.[3]

Respondent is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected and other refundable or creditable taxes under the Tax Code, with address at the BIR National Office, Diliman, Quezon City.[4]

1 Docket, CTA Case No. 7933, p. 5.
2 Docket, CTA Case 7933, p. 11
3 Docket, CTA Case No. 7933, p. 65.
4 Docket, CTA Case No. 7933, p. 4.

Petitioner filed its original VAT return for the 2nd quarter of 2007 on July 24, 2007. Petitioner subsequently filed an amended return on June 23, 2008 which reflected total zero-rated sales of P3,336,877,804.52, importation of goods of P149,885,075.00 with input tax of P17,986,209.00, and purchases of services of P3,550,949.42 with input tax of P426,112.93.[5]

Petitioner filed its original VAT return for the 3rd quarter of 2007 on October 23, 2007. Petitioner subsequently filed an amended return on June 23, 2008 which reflected total zero-rated sales of P3,322,807,460.21, importation of goods of P169,237,058.34 with input tax of P20,312,767.00, and purchases of services of P3,745,108.00 with input tax of P449,412.96, and domestic purchases of goods of P9,037,481.00 with input tax of P1,084,497.72.[6]

Pursuant to Section 4.112-1, Revenue Regulations No. 16-2005, Petitioner filed its claim for refund/tax credit with the One Stop Shop Center of the Department of Finance (OSS) on June 15, 2009, per Application No. 52743 for the amount of P18,412,322.93 for the 2nd quarter of 2007, and per Application No. 52742 for the amount of P21,846,677.68, which filing is well within the two (2)-year period prescribed in Sec. 112(A) of the Tax Code.[7]

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5 Par. 3, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), CTA Case No. 7933, Docket, p. 65.

6 Par. 3, Summary of Facts Admitted, SFI, CTA Case No. 7968, Docket, p. 45.

7 Par. 4, Summary of Facts Admitted, SFI, CTA Case No. 7968, Docket p. 46.

Since respondent has not yet granted Petitioner's claim for refund or issuance of tax credit certificate, petitioner filed before this Court the present Petitions for Review docketed as CTA Case Nos. 7933 and 7968 filed on June 19, 2009 and September 8, 2009 respectively.

On August 10, 2009, respondent filed his Answer in CTA Case No. 7933, raising the following Special and Affirmative Defenses:

> "5. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 6. Petitioner's claim for tax refund is subject to administrative investigation/examination by respondent's Bureau.
>
> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.
>
> 8. 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 provisions of the 1997 NIRC, 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 Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the 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 1997 NIRC, 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 P18,412,322.93 allegedly representing unutilized input VAT from its purchases of goods and services attributed/allocated to its export sales, were:

i. paid by petitioner;

ii. attributable to its zero-rated or effectively zero-rated sales; and

iii. such input taxes paid should not have been applied against any output tax.

e. That petitioner's claim for tax refund allegedly representing unutilized input VAT in the amount of P18,412,322.93 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 1997 NIRC, as amended.

9. In an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

10. 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 *(Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005)*. 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 to plaint to be mistaken and too categorical to be misinterpreted *(Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444)."* gr

On October 1, 2009, respondent likewise filed his Answer in CTA Case No. 7968, alleging by way of Special and Affirmative Defenses that:

"5. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

6. Petitioner's claim for tax refund is subject to administrative routinary investigation/examination by respondent's Bureau.

7 Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.

8. 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 provisions of the 1997 NIRC, 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 Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the 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 1997 NIRC, 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 P21,846,677.68 allegedly representing unutilized input VAT from its purchases of imported goods and domestic goods and services attributed/allocated to its export sales, were:

i. paid by petitioner;

ii. attributable to its zero-rated or effectively zero-rated sales; and

iii. such input taxes paid should not have been applied against any output tax.

e. That petitioner's claim for tax refund allegedly representing unutilized input VAT in the amount of P21,846,677.68 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 1997 NIRC, as amended.

9. Furthermore, in an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

10. 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 he same. *(Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005).* 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 to plain to be mistaken and too categorical to be misinterpreted *(Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444).*

On October 16, 2009, the parties filed their "Stipulation of Facts and Issues," which was approved by this Court in a Resolution dated October 23, 2009 for CTA Case No. 7933, and on October 23, 2009, the parties likewise filed their "Stipulation of Facts and Issues," which was approved by this Court in a Resolution dated "October 29, 2009 for CTA Case No. 7968. Pre-Trial was terminated and the parties were ordered to proceed with the trial on the merits.

On January 25, 2010, petitioner filed a motion for the consolidation of CTA Case No. 7933 with CTA Case No. 7968, considering that both cases involve the same cause of action, the same issue, the same witnesses and the same documentary evidences. The only difference between CTA Case No. 7933 from CTA Case No. 7968 is that the former covers the claim for VAT refund for the 2nd quarter of 2007 while the latter covers the claim for VAT refund for the 3rd quarter of 2007. [8] This Court granted the consolidation in a resolution dated January 27, 2010.[9]

Petitioner filed its Formal Offer of Evidence on April 16, 2010[10], offering exhibits "A" to "P", inclusive of their sub-markings. In a Resolution dated June 3, 2010, the Court admitted Exhibits "A" to "C-3", "D" to "H-26", "J" to "J-178", "L" to "L-10", "N-1" to "N-16" and "P". Exhibit "C-4", however, was denied admission for failure of the petitioner to mark and identify the same in Court.

On the other hand, Respondent manifested that he has no documentary evidence to be marked and no witnesses to be presented.

During the hearing held on July 26, 2010, the parties are granted a period of thirty (30) days from July 26, 2010 or until August 25, 2010 to file their respective memorandum.[11] gr

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8 Docket, CTA Case No. 7968, pp. 67-68.
9 Docket, CTA Case No. 7968, p. 69.
10 Docket, CTA Case No. 7933, p. 96.
11 Minutes of the Hearing, July 26, 2010, CTA Case No. 7933, Docket, p. 108.

On September 3, 2010, the case was ordered submitted for decision after the petitioner submitted its Memorandum on August 10, 2010, *sans* respondent's Memorandum.

THE ISSUES

The stipulated issues [12] submitted by the parties for this Court's resolution are as follows:

<u>CTA CASE NO. 7933</u>

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE EXCESS INPUT TAXES IN THE TOTAL AMOUNT OF P18,412,322.93 FOR THE 2ND QUARTER OF 2007 REPRESENTING ITS UNUTILIZED INPUT VAT FOR THE PURCHASE/IMPORTATION OF GOODS AND SERVICES ON ACCOUNT OF ITS BEING A PRODUCER AND EXPORTER OF MINERAL PRODUCTS.

<u>CTA CASE NO. 7968</u>

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE EXCESS INPUT TAXES IN THE TOTAL AMOUNT OF P21,846,677.68 FOR THE 3RD QUARTER OF 2007 REPRESENTING ITS UNUTILIZED INPUT VAT FOR THE PURCHASE/IMPORTATION OF GOODS AND SERVICES ON ACCOUNT OF ITS BEING A PRODUCER AND EXPORTER OF MINERAL PRODUCTS.

To recapitulate, the issue to be resolved is whether or not the petitioner is entitled to a refund of its excess and unutilized input taxes for the 2nd and 3rd quarters of 2007. *gr*

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12 Statement of the Issue, SFI, Docket, CTA Case No. 7933, p. 66 and CTA Case No. 7968, p. 46.

THE COURT'S RULING

Petitioner anchors his claim on Section 112(A) of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended by Republic Act No. 9337, 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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax:**: *Provided, however,* That in the case of zero-rated sales under Section 106 (A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." (emphasis supplied)

From the foregoing, the petitioner must comply with the following requisites to be entitled to a refund or tax credit, to wit:

1. There must be a zero-rated or effectively zero-rated sales;

2. That input taxes were incurred or paid;

3. That such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;

4. That the input VAT payments were not applied against any output VAT liability; and

5. That the claim for refund was filed within the two-year prescriptive period.

This Court finds it appropriate to first determine the timeliness of the filing of the administrative claim.

The High Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.),*[13] enunciated that the two (2)-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997, as amended by Republic Act No. 9337 is reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

The celebrated case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[14] provides a period of two (2) years, after the close of the taxable quarter when the sales were made, within which a VAT registered person whose sales are zero-rated or effectively zero-rated, may file an administrative claim for the issuance of tax credit certificate and refund of its unutilized input tax. Should the CIR deny the claim or failed to act upon the claim upon the lapse of the one hundred twenty (120) day period, the affected taxpayer is granted a period of thirty (30) days from the denial or inaction within which to appeal his case before the CTA.

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[13] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

[14] G.R. 184823, October 6, 2010

In this case, petitioner is claiming for a refund of its unutilized input VAT for the second and third quarters of 2007. Counting from the close of second quarter of 2007, which is on June 30, 2007 and the close of the third quarter of 2007, which is September 30, 2007, petitioner has until June 30, 2009 and September 30, 2009, respectively, to file its claim for refund.

A close scrutiny of the records reveals that the administrative claim for refund by the petitioner for the second and third quarters of 2007 were both filed on June 15, 2009. Thus, its administrative claim for refund or issuance of tax credit certificate filed before the Bureau of Internal Revenue was well within the two (2)-year prescriptive period.

Although the administrative claim was filed within the two (2)-year prescriptive period, We are, however, constrained to deny the claim on the ground of premature filing before this Court.

The administrative claim for refund was filed on June 15, 2009. This gives the respondent until October 13, 2009 to decide the petitioner's claim. This gives the petitioner a period of thirty (30) days or until November 12, 2010 from October 13, 2009 to file its Petition for Review. Unfortunately, the Petitions for Review covering the 2nd and 3rd quarters of 2007 were filed on June 19, 2009 and September 8, 2009 respectively. Clearly, the petitions for review filed before this Court were made without waiting for expiration of the

120-day period within which the respondent shall decide upon the administrative claim.

WHEREFORE, the instant Petition for Review in CTA Case Nos. 7933 and 7968 is hereby **DENIED** for having been prematurely filed.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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

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, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice