**REPUBLIC OF THE PHILIPPINES**
# Court of Tax Appeals
**QUEZON CITY**

## ***SECOND DIVISION***

**PHILEX MINING CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**C.T.A. CASE NO. 7687**

Members:

**CASTAÑEDA, JR.,** *Chairperson*
**UY,** *and*
**PALANCA-ENRIQUEZ,** *JJ.*

**Promulgated:**
JUL 2 0 2009
9:12 a.m.

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# DECISION

**CASTAÑEDA, JR., J.:**

The instant Petition for Review seeks the refund of petitioner's alleged excess input value-added tax in the amount of P23,956,732.44, attributable to its zero-rated sales for the third quarter of taxable year 2005.

Philex Mining Corporation (Petitioner) is a corporation organized and existing under Philippine laws, with principal office address at 27 Philex Bldg., Fairlaine St., Kapitolyo, Pasig City.[1] It is engaged in the mining business, which includes the exploration and operation of mine properties and the commercial production and marketing of mine products.[2] Petitioner is

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[1] Annex "A-1", Petition for Review, docket, p. 10.
[2] Par. 1, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), docket, p. 36.

registered as a value-added tax (VAT) taxpayer under VAT Registration Certificate No. 35-6-000731 dated October 29, 1987.[3] It likewise has a duly approved Application for VAT Zero-rate, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95, effective April 12, 1998.[4]

Respondent Commissioner of Internal Revenue is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of claims for issuance of tax credit certificate or refund of taxes erroneously or illegally collected, and other refundable or creditable taxes under the National Internal Revenue Code (NIRC). He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Original VAT Return for the third quarter of taxable year 2005 on October 21, 2005, and its Amended VAT Return for the same quarter on December 1, 2005; which reflected total zero-rated sales in the amount of P1,545,162,808.17; domestic purchases of goods in the amount of P179,934.44, with an input tax of P17,993.44; and importation of goods amounting to P239,387,390.00, with an input tax of P23,938.73.[5]

Believing that its input taxes are refundable, petitioner filed its claim for refund/tax credit of the amount of P23,956,732.44 with the One Stop Shop Center of the Department of Finance on March 20, 2006, per Application No. 52490.[6] 

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[3] Annex "A", Petition for Review, docket, p. 9.
[4] Par. 2, Summary of Facts Admitted, SFI, docket, p. 36.
[5] Par. 4, Summary of Facts Admitted, SFI, docket, pp. 36-37.
[6] Annex "C", Petition for Review, docket, p. 18; Par. 5, Summary of Facts Admitted, SFI, docket, p. 37.

Inasmuch as petitioner has yet to receive a favorable response from respondent and before it could be barred by prescription, petitioner filed this instant Petition for Review on April 17, 2007, pursuant to Sections 112 and 229 of the NIRC of 1997.

In the Answer[7] filed on December 20, 2007, respondent interposed the following Special and Affirmative Defenses:

> "4. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of an exemption;
>
> 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;
>
> 6. The Petitioner should prove that its legal basis for claiming for the amount being refunded."

The parties submitted their Stipulation of Facts and Issues[8] on January 31, 2008, which the Court approved in a Resolution[9] dated February 7, 2008; thus, the Pre-Trial was terminated and the parties were ordered to proceed with the trial on the merits.

Petitioner filed its Formal Offer of Evidence on August 13, 2008, offering Exhibits "A" to "J", inclusive of submarkings.

During the hearing held on November 26, 2008, respondent was declared by the Court to have waived his right to present evidence, for failure to appear during the scheduled hearings for presentation of evidence. The parties were likewise given a period of thirty (30) days from receipt of said Resolution within which to file their respective Memorandum. Jr

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[7] Docket, p. 25.
[8] Docket, pp. 36-37.
[9] Docket, p. 39.

On February 6, 2009, the case was ordered submitted for decision after petitioner submitted its Memorandum on January 9, 2009, without respondent's Memorandum having been filed.[10]

The jointly stipulated issues[11] submitted by the parties for the Court's resolution are as follows:

> "1. Whether or not Petitioner's importation of capital goods, and domestic purchases and importations of goods which are attributable to its export sales for the 3rd quarter of 2005, are duly supported by documentary evidence.
>
> 2. Whether Petitioner made direct and indirect exports of mineral products during the same period.
>
> 3. Whether or not the accumulated or excess input VAT was utilized or applied by Petitioner against output VAT in the 3rd quarter of 2005 or in the succeeding quarters or taxable years.
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> 4. Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.
>
> 5. Whether or not Petitioner is entitled to the refund of the excess input taxes in the total amount of Php23,956,732.44 for the 3rd quarter of 2005 paid for the purchase of capital goods and/or non-capital goods and services due to Petitioner being a producer and exporter of mineral products."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to the refund of the amount of P23,956,732.44, representing alleged unutilized input taxes paid for the purchase of capital goods and/or non-capital goods and services during the third quarter of taxable year 2005." *gc*

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[10] Docket, p. 234.
[11] Statement of the Issues, Stipulation of Facts and Issues, docket, pp. 36-37.

Section 112(A) of the National Internal Revenue Code of 1997 lays down the requirements for refund or issuance of tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads as follows:

> "**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."

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

1. there must be 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.

The Court finds it appropriate to determine first the timeliness of the filing of the instant claim. *gr*

In the case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[12], the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made pertaining to input VAT, regardless of whether said tax was paid or not. The pertinent portions of the High Court's Decision read:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112 (A) of the NIRC pertinently reads:
>
>> (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: x x x. (Emphasis ours.)
>
> **The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years 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**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made,**

gr

[12] G.R. No. 172129, September 12, 2008.

**regardless when the input VAT was paid.**" (*Emphasis supplied*)

Based on the afore-quoted jurisprudence, the reckoning of the prescriptive period shall commence 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 present claim involves petitioner's input VAT incurred for the third quarter of taxable year 2005. Counting from the close of said quarter on September 30, 2005, petitioner had until September 30, 2007 within which to file its refund claim, both in the administrative and judicial levels. However, September 30, 2007 fell on a Sunday.

Under the 1997 Revised Rules of Court, if the last day of the period, as thus computed falls on a Saturday, a Sunday, or a legal holiday in the place where the Court sits, the time shall not run until the next working day.[13] In other words, petitioner had until October 1, 2007 within which to file its administrative and judicial claims.

Perusal of the records reveals that petitioner's administrative claim was filed on March 20, 2006[14] and the Petition for Review was filed on October 17, 2007. Even though the administrative claim was filed within the two-year prescriptive period, the Petition for Review was however filed out of time. Consequently, petitioner is barred from claiming refund of its alleged excess input taxes for the third quarter of taxable year 2005 in the amount of P23,956,732.44, due to prescription.

[13] Section 1, Rule 22 of the Revised Rules of Court.
[14] Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 37; Annex "C", Petition for Review, docket, p. 18.

Even though the denial of petitioner's claim for refund on the ground of prescription appears at first glance as rather harsh, it is must be pointed out that even the most meritorious claim is not exempted from the application and effects of prescription. The Highest Tribunal in the case of *Antonio, Jr. vs. Morales*[15] explained its rationale in this wise:

> "In the early case of *US v. Serapio*,[16] this Court held that under the Civil Code, the prescription of an action refers to the time within which an action must be brought after the right of action has accrued. The prescriptive statutes serve to protect those who are diligent and vigilant, not those who sleep on their rights. The rationale behind the prescription of actions is to prevent fraudulent and stale claims from springing up at great distances of time, thus surprising the parties or their representatives when the facts have become obscure from the lapse of time or the defective memory or death or removal of the witnesses. Prescription applies even to the most meritorious claims."

To reiterate, petitioner's claim for refund of its alleged excess input taxes for the third quarter of taxable year 2005 cannot be granted on the ground of prescription.

In view of the above ruling, this Court now deems it unnecessary to determine petitioner's compliance with the other requisites pertinent to refund claims and the merits of the instant Petition for Review will no longer be the subject of this Court's further evaluation.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** due to prescription.

**SO ORDERED.**

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

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[15] G.R. No. 165552, January 23, 2007.
[16] 23 Phil 584.

WE CONCUR:

**ERLINDA P. UY**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
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.**
Associate Justice
Chairperson

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Presiding Justice