REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NO. 8808**
	Members:
- versus -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 13 2016 10:25 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is respondent's **Motion for Reconsideration (Of the Decision dated May 19, 2016)**, filed on June 7, 2016, with petitioner's **Comment/Opposition**, filed on July 7, 2016.

Respondent seeks reconsideration of the Court's Decision dated May 19, 2016 (assailed Decision)[1], the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱25,811,450.88**, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales for the first quarter of taxable year 2012."[2]

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[1] Docket, vol. 2, pp. 730 to 752
[2] Docket, vol. 2, p. 751

In assailing the said Decision, respondent anchors his arguments on the following grounds:

I. Petitioner failed to prove that the input taxes paid were actually attributable to the alleged zero-rated sales;

II. This Court should not have considered as valid all the final invoices bearing dates later than the dates of sale of petitioner's products;

III. Petitioner's failure to submit Subsidiary Sales Journal and Subsidiary Purchase Journal is sufficient ground to deny the claim; and

IV. Petitioner was not able to fully substantiate its claim for refund.

Petitioner opposes the motion by highlighting its testimonial and documentary evidence submitted before the Court. According to petitioner, its entitlement to a refund is based not only on the substantial number of supporting documents marked as exhibits, formally offered in evidence, and admitted by the Court, but also as confirmed by the assailed Decision itself after the Court made a thorough review and analysis of all the documentary evidence presented.

The Motion for Reconsideration is bereft of merit.

Petitioner had VAT zero-rated sales and the input taxes incurred were attributable thereto

Respondent argues that this Court erred in concluding that petitioner had substantiated zero-rated sales of ₱2,001,741,541.59 for the first quarter of 2012 without the latter submitting the documentary requirements enumerated in the case of *Atlas Consolidated Mining Corporation vs. Commissioner of Internal*

Revenue[3], such as sales invoices or receipts, purchases invoices or receipts, evidence of actual receipt of goods, BOI statement showing the amount and description of sale of goods, etc., original or attested copies of invoice or receipt on capital equipment locally purchased, and photocopy of import entry document and confirmation receipt on imported capital equipment. Respondent further asserts that petitioner may have presented sales invoices, but it failed to produce in evidence proof of actual receipt of the goods and the BOI statement showing the amount and description of the goods delivered to the foreign buyer.

On the other hand, petitioner claims otherwise citing its Bureau of Internal Revenue (BIR) Certificate of Registration[4] and the Board of Investment (BOI) Certification[5] as proofs that it is engaged in "1010 Gold Ore Mining" and in "1020 Copper Ore Mining" and that it exported 100% of its total sales volume/value for the calendar year (CY) covering January 1 to December 31, 2012.

The Court does not agree with respondent's arguments.

This issue has already been sufficiently and adequately discussed in the assailed Decision.[6]

A revisit of the assailed Decision reveals that an analysis over the submitted pieces of evidence was thoroughly discussed therein to conclude that petitioner had indeed generated substantiated zero-rated sales in the net adjusted amount of ₱2,001,741,541.59 for the first quarter of 2012. The Court carefully examined all of petitioner's relevant evidence such as Export Declarations, Bills of Lading, Provisional Invoices, Final Invoices, Certificates of Inward Remittances and the Report of the Independent Certified Public Accountant (ICPA) which support petitioner's VAT zero-rated sales.

The Final Invoices, although dated outside the period of claim, should be considered in determining petitioner's zero-rated sales considering that the Provisional Invoices and

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[3] G.R. No. 141104, June 8, 2007
[4] Exhibit "P-14-i", docket, vol. 1, p. 677
[5] Exhibit "P-15", docket, vol. 1, p. 680
[6] Docket, vol. 2, pp. 740 to 748

Bills of Lading proved that sales were actually generated during the period of claim.

Respondent contends that the aggregate amount of US$196,000,694.00 indicated in the Final Invoices that were dated outside the period of claim should not have been included in the computation of petitioner's zero-rated sales.

Petitioner explains that the final prices of exporting its products cannot yet be determined on the date of shipment because the products have yet to undergo certain intricate procedures at the buyer's smelting/refinery plant at the port of discharge abroad to determine the final settlement and final prices for payable copper, payable gold and payable silver. As such, only the alleged Provisional Invoice is issued on the date of shipment covering 90% of the estimated or provisional price, and a Final Invoice is issued later after the above procedures are completed and after the final prices are determined covering the balance of the final price.

The contention of respondent is without merit.

The shipment date indicated in the Bills of Lading and in the Provisional Invoices is the date of the sale of petitioner's exported products. The presence of the Final Invoices, which bear dates later than the dates of shipment as indicated in the Bills of Lading and Provisional Invoices, does not remove the fact that sales and actual shipment of goods from the Philippines to a foreign country, as contemplated under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, have actually transpired during the period of claim.

The Final Invoices are additional evidence which further support the existence of petitioner's zero-rated sales. These invoices were issued in reference to the same sales transaction consummated during the period of claim. Aside from the Provisional Invoice issued upon shipment, a Final Invoice was being issued after the contracting parties reached an agreement regarding the final settlement of weights, moisture content, assay and price which is done after arrival of the shipment at the port of loading. The Final Invoices dated outside the period of claim do not cover separate sales transactions for different taxable period, but relate to the same sales transactions of petitioner during the period of claim as indicated in the Provisional Invoices, Bills of Lading, and Export Declarations.

Non-submission of subsidiary sales journal and subsidiary purchase journal before this Court is not fatal to petitioner's claim for input VAT refund

Respondent asserts that petitioner failed to comply with the provisions of Section 113(C) of the NIRC of 1997, as amended,[7] and Section 4.113.3 of Revenue Regulations (RR) No. 16-2005,[8] which essentially require all VAT-registered persons to maintain a subsidiary sales journal and subsidiary purchase journal. Respondent posits that since petitioner failed to submit the subsidiary sales journal and subsidiary purchase journal, and failed to prove that the submitted documents were sufficient, petitioner is deemed to have failed to substantiate its claim for refund.

The Court finds respondent's arguments unmeritorious.

The requirements for refund or issuance of tax credit certificate of input tax attributable to zero-rated or effectively zero-rated sales are delineated in Section 112 of the NIRC of 1997, as amended. As consistently held by the Court *En Banc* in similar cases involving the

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[7] SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

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(C) *Accounting Requirements.* - Notwithstanding the provisions of Section 233, all persons subject to value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

[8] SEC. 4.113-3. *Accounting Requirements.* - Notwithstanding the provisions of Sec. 233, all persons subject to VAT under Secs. 106 and 108 of the Tax Code shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which every sale or purchase on any given day is recorded. The subsidiary journal shall contain such information as may be required by the Commissioner of Internal Revenue.

A subsidiary record in ledger form shall be maintained for the acquisition, purchase or importation of depreciable assets or capital goods which shall contain, among others, information on the total input tax thereon as well as the monthly input tax claimed in VAT declaration or return.

same parties[9], there is nothing in the aforementioned provision and implementing regulation, which require the presentation of the subsidiary sales journal and subsidiary purchase journal in order that a taxpayer may be entitled to refund or issuance of tax credit certificate of its unutilized input tax attributable to zero-rated sales. In fact, in order to be entitled to a refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales, Section 112 requires only the following:

a) the taxpayer is VAT-registered;
b) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
c) the input taxes are due or paid;
d) the input taxes are not transitional input taxes;
e) the input taxes have not been applied against output taxes during and in the succeeding quarters;
f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
g) for zero-rated sales under Sections 106(A)(2)(a)(1) and (2); 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
i) the application and the claim for a refund have been filed within the prescribed period.

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[10], the Supreme Court held that when a judicial claim for refund or tax credit in the Court of Tax Appeals (CTA) is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim, to wit:

> "A distinction must, thus, be made between administrative cases appealed due to inaction and those

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[9] *Commissioner of Internal Revenue vs. Philex Mining Corporation*, CTA EB Case No. 1138, July 29, 2015; *Commissioner of Internal Revenue vs. Philex Mining Corporation*, CTA EB Case No. 1168, June 19, 2015; and *Commissioner of Internal Revenue vs. Philex Mining Corporation*, CTA EB Case No. 1116, January 07, 2015

[10] G.R. No. 207112, December 8, 2015

dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim."

In this case, the Petition for Review was filed due to the inaction of respondent on petitioner's administrative claim. Thus, the question of whether or not the evidence submitted by petitioner is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of this Court.

Moreover, records reveal that petitioner was able to prove its compliance with the aforementioned requirements for refund by submitting the required documents/proof of its entitlement to a tax refund or issuance of a tax credit certificate of its unutilized excess input VAT attributable to its zero-rated sales for the first quarter of 2012, *albeit* in the reduced amount of ₱25,811,450.88. Thus, non-submission of petitioner's subsidiary sales journal and subsidiary purchase journal is not crucial so as to deprive petitioner of its right to a refund.

Petitioner is entitled to a refund of its unutilized input VAT attributable to its zero-rated sales in the reduced amount of ₱25,811,450.88

Respondent maintains that petitioner failed to fully substantiate its claim for refund. However, other than this general assertion, respondent does not spell out which documentary evidence among those offered by the petitioner failed to comply with the requirements of law other than those already taken into consideration by this Court in the assailed Decision.

It is true that tax refunds, like tax exemptions, are construed strictly against the taxpayer. Nevertheless, since petitioner was able to present sufficient evidence to prove its claim for refund to the extent of ₱25,811,450.88, then it is entitled to a refund of such amount.

Based on the foregoing, there is no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Of the Decision dated May 19, 2016)** is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice