REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	**C.T.A. CASE NO. 7115**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 10 2009 3:00 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., J.:

For this Court's resolution is petitioner's **"Motion for Reconsideration/New Trial"** filed on May 29, 2008, seeking the reconsideration and setting aside of this Court's Decision dated May 5, 2008, which denied the Petition for Review; or in the alternative, the granting of a new trial to afford petitioner the opportunity to adduce in evidence the provisional invoices attached to the Motion.

In a Resolution promulgated on September 15, 2008, this Court allowed and required petitioner to present to the Court the originals of the documents attached to its Motion as annexes for evaluation and consideration. This case was then set for a Commissioner's hearing for the marking of petitioner's additional documentary evidence.

Petitioner seeks the reconsideration of the same *Decision* by enumerating a lengthy assignment of errors, which are quoted as follows:

> "I.
>
> THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S INDIRECT EXPORT SALES OF GOLD TO THE BSP ARE NOT ZERO-RATED BECAUSE THE SALES INVOICES WERE NOT REGISTERED WITH THE BIR, AND ARE OUTSIDE THE AUTHORITY TO PRINT GRANTED TO PETITIONER, SUPPOSEDLY IN VIOLATION OF SECTIONS 113, 237 AND 238 OF THE TAX CODE, AND SECTION 4.108-1 OF REVENUE REGULATIONS (RR) NO. 7-95. ADDITIONALLY, THIS HONORABLE COURT ERRED IN RULING THAT INVOICE NO. AUREX-104 FALLS OUTSIDE THE PETITION'S PERIOD OF CLAIM.
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> II.
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> THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S DIRECT EXPORT SALES OF COPPER CONCENTRATES TO JAPAN DO NOT QUALIFY FOR VAT ZERO-RATING BECAUSE THE SALES INVOICES THAT PETITIONER SUBMITTED COVERING THE SAME PERTAIN TO THE 1ST AND 2ND QUARTERS OF 2003 AND FALL OUTSIDE THE PERIOD OF THE CLAIM IN THE PETITION. THE FACT IS THAT SAID SALES INVOICES PERTAIN TO THE 4TH QUARTER OF 2002, THE PERIOD OF THE CLAIM.
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> III.
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> THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S INDIRECT EXPORT SALES TO PASAR ALSO DO NOT QUALIFY FOR VAT ZERO-RATING BECAUSE THE SALES INVOICES THAT COVERED THE SALES FALL OUTSIDE THE PERIOD OF THE CLAIM IN THE PETITION. THE FACT IS THAT SAID SALE INVOICES ALSO PERTAIN TO THE PERIOD OF THE CLAIM."

Anent the first assigned error, it is petitioner's position that although the sales invoices used were not registered with the Bureau of Internal Revenue (BIR) and are outside the authority to print, the indirect export sales of gold to the BSP nonetheless qualify as zero-rated sales pursuant to Section 106(A)(2)(a)(4) of the National Internal Revenue Code (NIRC) of 1997. Petitioner argues that the Court erred when it required that Section 106(A)(2)(a)(1) and (a)(4) should be read in conjunction with Section 113(A) of the same Code and Section 4.108-1 of Revenue Regulations No. 7-95, since Section 106(A)(2)(a)(4) is complete in itself in defining and prescribing the requisites of a zero-rated export sale. There is nothing in the provision requiring compliance with the invoicing requirement under Section 113(A) of the NIRC of 1997.

This Court does not agree.

Petitioner failed to consider that a statute must be construed in relation to other statutes; for a law is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Each part or section should be construed in connection with every other part and section so as to produce a harmonious whole.[1] In this regard, Section 106(A)(2)(a)(4) should not be interpreted in isolation but must be read together with other Sections of the NIRC of 1997, particularly, Sections 113, 237, and 238, in order to arrive at a correct and complete interpretation.

As noted by the Court in its Decision[2], the sales invoices[3] pertaining to the indirect export sales of gold to the BSP in the amount of US$82,336.00 are not duly registered with the BIR in violation of Section 238 of the NIRC of 1997. Moreover, the word "VAT" after TIN was not imprinted, in clear violation of Section 4.108-1 of Revenue Regulations No. 7-95 in relation to

[1] Ruben E. Agpalo, Statutory Construction, Fourth Edition, 1998, p. 248.
[2] Decision dated May 5, 2008, *Rollo*, pp. 239-240.
[3] Exhibits "K9" and "K10".

Sections 113, 237 and 238 of the NIRC of 1997.

While petitioner may have presented Permit No. LL-002-92 dated January 3, 1992[4] in support of its Motion for Reconsideration, a reading of the said permit shows that the same does not include the authority to use computerized sales invoices or receipts. The wordings of the letter of authority are explicit and unequivocal that the BIR only granted petitioner permit to use computerized books of accounts. The said permit does not include the authority to print sales invoices. Thus, petitioner's first assigned error must fail.

As regards the second and third assigned errors, petitioner explains that in its direct exports of copper concentrates, there are two periods when pricing or valuation of a shipment is made. *First*, a **provisional pricing or valuation** of the shipment is made by the petitioner **upon shipment** based on weight (dry and wet weight) and moisture as determined by petitioner and also based on petitioner's provisional assays showing copper, gold, and silver content. *Second*, **upon arrival of the concentrates at the port of unloading**, the weight and the moisture content are determined. Assays are also made for copper, gold and silver content. After these are done and settled, **a final concentrate value is computed.**

Petitioner points out that the considered date of the sale transaction is at the time of the delivery of the shipment to the carrier. However, the sales contract with its buyer, Nippon Mining and Metals Co. Ltd of Tokyo, Japan[5] requires a provisional payment from the latter to petitioner of 90% of the

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[4] Exhibit "P".
[5] Exhibit "G".

estimated value of a shipment and a final payment based on final settlement of weights, assays and quotations. This is allegedly the reason why petitioner issues a provisional invoice for the 90% estimated value of a shipment and a final invoice for the payment of the final balance after final settlement of the weight, assays and quotations are completed. This also supposedly explains why the final invoices carry dates much later than the date when the sale or shipment was made.

In support of its motion, petitioner presented and formally offered the Provisional Invoices[6] it issued for the fourth quarter of taxable year 2002 to Pan-Pacific Copper Co., Ltd., the assignee of Nippon Mining and Metals Co. Ltd.[7]. With the presentation of the said provisional invoices, petitioner proved that the final sales invoices supporting its export sales of copper concentrates to Nippon Japan in the amount of US$8,923,926.00 are valid and that the said sales with peso equivalent of P479,668,132.79, as computed below, qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997.

Declared Zero-Rated Sales in Peso[8]	1,045,848,710.49
Divided by Declared Zero-Rated Sales in US$[9]	÷ 19,457,362.00
Average peso to dollar rate	53.7507967673
Multiplied by Substantiated Zero-rated Sales in US$	x 8,923,926.00
Substantiated Zero-Rated Sales in Peso	**479,668,132.79**

As to petitioner's indirect export sales to Philippine Associated Smelting and Refining Corporation (PASAR) in the amount of US$10,222,431.00, petitioner likewise presented the corresponding Provisional Invoices it issued

[6] Exhibits "Q" and "R".
[7] Exhibit "G-2".
[8] Exhibit "A-1-a".
[9] Exhibit "J".

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to PASAR.[10] These documents proved that petitioner actually made indirect exports to PASAR in the amount of US$10,222,431.00, except for the amount of US$2,179,656.00, the covering provisional invoice[11] and the certificate of shipment[12] of which was dated outside the subject period of claim. Such indirect export sales with peso equivalent of P432,305,564.47, as computed below, are subject to zero percent (0%) VAT, pursuant to Section 106(A)(2)(a)(5) in relation to Articles 23 and 77(2) of the Omnibus Investments Code and as clarified under RMC No. 74-99.

Declared Zero-Rated Sales in Peso	1,045,848,710.49
Divided by Declared Zero-Rated Sales in US$	÷ 19,457,362.00
Average peso to dollar rate	53.7507967673
Multiplied by Substantiated Zero-rated Sales in US$	x 8,042,775.00
Substantiated Zero-Rated Sales in Peso	**432,305,564.47**

As regards the catch up adjustments to petitioner's prior quarter's shipments amounting to US$228,669.00, the same shall be denied VAT zero-rating for petitioner's failure to present supporting documents.

To recapitulate, out of the reported zero-rated sales of US$19,457,362.00 for the fourth quarter of 2002, only the following export sales in the total amount of US$16,966,701.00, with peso equivalent of P911,973,697.26, qualify for VAT zero-rating:

	In US Dollars	In Phil Peso
Direct Exports of Copper to Japan	8,923,926.00	479,668,132.79
Indirect Exports of Copper to PASAR	8,042,775.00	432,305,564.47
Total	**16,966,701.00**	**911,973,697.26**

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[10] Exhibits "S" to "X".
[11] Exhibit "X".
[12] Exhibit "K8b".

The Court now proceeds to determine whether petitioner's input taxes in connection with its zero-rated sales for the fourth quarter of 2002 are duly substantiated.

In its VAT Return for the fourth quarter of 2002[13], petitioner reflected an input VAT of P185,316.85 on domestic purchases and an input VAT of P4,021,496.00 on importations, or a total of P4,206,812.85, as shown below:

	Purchases	Input Tax
Domestic Purchases - Goods other than Capital Goods	P 1,853,168.46	P 185,316.85
Importations - Goods other than Capital Goods	40,214,960.00	4,021,496.00
Total	**P 42,068,128.46**	**P 4,206,812.85**

In order to determine the accuracy of petitioner's declaration, the Court commissioned an Independent Certified Public Accountant (ICPA) to examine the voluminous documents that petitioner submitted in support of its claim for refund. In his Report dated December 21, 2005[14], the ICPA noted the following:

	Particulars	Amount
a	Original VAT official receipts that are in the name of petitioner	
	a.1 Receipts dated in the current quarter	P 18,691.67
	a.2 Out of period receipts dated 1st quarter of 2003	1,095.96
b	Non-VAT receipts	131,654.55
c	Non-VAT invoices	3,666.66
d	Invoices that are photocopies or no invoices were presented	30,208.01
	TOTAL	**P 185,316.85**

Based on the above findings, only the input VAT of P18,691.67 *(item a.1)* represents petitioner's valid claim while the remaining amount of P166,625.18 should be denied for the above-stated reasons *(items a.2, b, c, and d)*. However, even if petitioner was able to substantiate its domestic

[13] Exhibit "A-1-b".
[14] Exhibit "J", page 6.

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purchases of goods and services with VAT invoices and official receipts, nonetheless, the amount of P18,691.67 is not allowable as input tax credit. Pursuant to Revenue Memorandum Order No. 9-00, the sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, to wit:

> "**SECTION 3.** *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
>
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec. 4.108-1(5) of Revenue Regulations No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

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In the present case, record shows that petitioner was issued a certification by the BOI attesting to the fact that petitioner is a BOI-registered entity with 100% exports. The Certification was valid for the period January 1, 2002 to December 31, 2002 as attested in the case of *GST Philippines, Inc. vs. Commissioner of Internal Revenue*[15], to wit:

> "In compliance xxx, petitioner submitted Certifications issued by the BOI for Philex Mining, Philex Gold and Lepanto Mining attesting that these companies are registered with the Board of Investments. In the same manner, it can be gleaned from the Certifications that the BOI companies exported 100% of their products for taxable years 2001 and 2002. xxx."

In addition, petitioner presented the said BOI Certification as evidence of its zero-rated sales on its previous case entitled *Philex Mining Corporation vs. Commissioner of Internal Revenue*[16]. Under Section 3.4 of RMO 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner covering the period January 1, 2002 to December 31, 2002. On the basis of said Certification, no output tax should be shifted by the local suppliers to petitioner. Hence, In the absence of clear and convincing proof that petitioner's local suppliers passed on or shifted the VAT on such domestic purchases to petitioner, it cannot claim the amount of P18,691.67 as input tax credits on its domestic purchases for the fourth quarter of taxable year 2002.

Anent the input VAT payment of P4,021,496.00 on petitioner's importations, the ICPA noted the following: *ga*

[15] CTA Case No. 6489, August 7, 2007.
[16] CTA Case No. 6828, pp. 183-184.

	Particulars	Amount
Input taxes paid on importation of:		
a.	Capital goods	P 2,776,345.00
b.	Other than capital goods	838,762.00
c.	Input tax payments with no supporting documents	406,389.00
	TOTAL	**P 4,021,496.00**

This Court finds that only the amount of P1,573,283.00 can be considered as a valid claim since it was directly paid to the Bureau of Customs and is duly covered by official receipts, computed as follows:

Items Imported	Exhibit No.	Input VAT
Hydraulic Pump	M2	P 20,982.00
2 Froth Pump for Flotation Plant	M3	210,563.00
132 pcs Polyethylene pipe	M14	201,518.00
Conveyor belt	M28	351,617.00
Electric Insulator	M37	2,213.00
1 Ctn. DK Froth	M38	131,876.00
268 Drums Sodium Isobutyl Xanthate	M39	140,084.00
1 Ctn. DK Froth	M40	133,390.00
80 Drums Dowfroth 250	M43	113,317.00
Sodium Isobutyl Xanthate	M44	133,083.00
268 Drums Sodium Isobutyl Xanthate	M45	134,640.00
Total		**P 1,573,283.00**

The remaining amount of P2,448,213.00 shall be disallowed for the following reasons:

	Items Imported	Exhibit No.		Input VAT	Total
a.	**Supported by Bank Debit Advice, but IERD not admitted by the Court**				
	5 Bundles Screen Woven Wire	M1	M1a	P 59,356.00	
	Parts for Crusher	M4	M4a	47,669.00	
	Rock Crushing Equipment	M5	M5a	38,026.00	
	2 Pkgs Parts for Jaw Crusher	M6	M6a	67,763.00	
	1 Pkg Parts for Engine	M7	M7a	36,541.00	
	Parts for Ball Mill	M8	M8a	164,443.00	
	Speed Gear Reducer & Motor	M9	M9a	51,860.00	
	2 Ctns Regulator Parts	M10	M10a	45,852.00	
	2 Pkgs Parts for Crusher	M11	M11a	8,238.00	

	2 Pcs Pocket Sealing Ring	M12	M12a	26,801.00	
	Parts for Overhead Crane	M13	M13a	25,472.00	
	2 Bundles Screen Woven Wire	M15	M15a	139,132.00	
	2 Ctns Spare Parts for screening	M16	M16a	24,013.00	
	1 Crate Mining Machinery	M17	M17a	75,965.00	
	Parts for Electrical Apparatus	M18	M18a	87,579.00	
	1 Crate Mining Machinery	M19	M19a	45,887.00	
	2 Crates Parts for Ball Mill	M20	M20a	99,374.00	
	1 Case Screen Sieve Bend	M21	M21a	60,403.00	
	3 Ctns Valve	M22	M22a	50,024.00	
	1 Ctn Parts for Speed Reducer	M23	M23a	7,966.00	
	1 Case pump	M24	M24a	82,606.00	
	Parts for Vibrating Screen	M25	M25a	346,196.00	
	Parts for Jaw Crusher	M26	M26a	10,004.00	
	1 Ctn Parts for Instrument	M27	M27a	28,465.00	
	1 Ctn Parts for Genset	M29	M29a	27,468.00	
	Parts for Overhead Crane	M30	M30a	36,839.00	
	Parts for Jaw Crusher	M31	M31a	12,312.00	
	1 Ctn Parts for Spiral Classifier	M32	M32a	73,227.00	
	1 Crate STC Parts for Ball Mill	M33	M33a	22,910.00	
	1 Ctn Filter Element	M34	M34a	15,504.00	
	4 Cases Parts for Pump	M35	M35a	136,354.00	
	3 Reels Parts for Overhead Crane	M36	M36a	37,416.00	
	1 Ctn Tapes	M41	M41a	22,025.00	
	2 Plts 30 Pails Litharge	M42	M42a	28,134.00	**P2,041,824.00**
b.	**No supporting documents presented**				
	IEIRD No.97870972			P 3,667.00	
	Parts for Overhead Crane			60.00	
	Chuck			116.00	

	Load Cells			10,038.00	
	Computer Software			28,518.00	
	1 Ctn Parts for Grader			6,645.00	
	1 Ctn Temperature Transmit			24,200.00	
	IEIRD No			34,790.00	
	Spare Parts			3,369.00	
	Chuck			6,306.00	
	Parts for Pump			170,233.00	
	80 Drums Dowfroth 250			114,784.00	
	Cupels			3,663.00	**406,389.00**
	TOTAL				**P2,448,213.00**

The amount of **P2,041,824.00** is disallowed considering that the Import Entry and Internal Revenue Declarations (IEIRDs)[17] supporting such importations were not admitted by this Court for failure of petitioner to present the originals.[18] Likewise, the Bank Debit Advices[19] are inadmissible since these do not indicate the actual input VAT payments. Furthermore, no official receipts or other documents proving actual payment of VAT on the imported goods were presented to support such claim.

As a general rule, input tax on importations should be supported with IEIRDs duly validated for actual payment of the input tax. Petitioner must prove the actual payment of VAT on the imported goods by submitting the documents specified in Section 4.104-5(b) of Revenue Regulations No. 7-95. The required evidence is the import entry or other equivalent document. Thus, Jc

[17] Exhibits "M1a" to "M42a".
[18] Resolution dated May 18, 2007, *Rollo*, p. 196.
[19] Exhibits "M1" to "M42".

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without these documents, petitioner's claimed input VAT payment in the amount of P2,041,824.00 cannot be granted.

The input taxes of **P406,389.00** shall likewise be disallowed for petitioner's failure to present before this Court any supporting documents to prove the same.

To recapitulate, out of the total input tax on importations of P4,021,496.00, only the amount of P1,573,283.00 is duly substantiated by valid supporting documents. However, a portion of the substantiated input VAT of P1,573,283.00 is applied against petitioner's reported output VAT liability of P171,745.04.[20] Accordingly, only the remaining input VAT of P1,401,537.96 (P1,573,283.00 – P171,745.04) can be attributed to the entire zero-rated sales[21] declared by petitioner, and only the input VAT of P1,222,132.55 is attributable to the substantiated zero-rated sales of P911,973,697.26, as computed below:

Substantiated input VAT	P	1,573,283.00
Less: Output Tax		171,745.04
Excess Input Tax	**P**	**1,401,537.96**
Substantiated Zero-rated Sales	P	911,973,697.26
Divided by Total Reported Zero-Rated Sales		÷1,045,848,710.49
Multiplied by Substantiated Excess Input VAT	x	1,401,537.96
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	**P**	**1,222,132.55**

As evidenced by its Quarterly VAT Returns[22] from the first quarter of 2003 to second quarter of 2004, petitioner was able to prove that the input

[20] Exhibit "A-1"/ "O-2-D".
[21] Exhibit "A-1"/ "O-2-D".
[22] Exhibits "O-2-E" to "O-2-J".

VAT of P1,222,132.55 was not applied against any output VAT in the succeeding quarters.

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period both in the administrative and judicial levels. The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[23], 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 the input VAT regardless of whether said tax was paid or not. The present claim pertains to input VAT incurred for the fourth quarter of 2002. Counting from December 31, 2002, the end of the fourth quarter of 2002, petitioner had until December 31, 2004 to file its claim both in the administrative and judicial levels. Therefore, the original administrative claim filed on May 3, 2004 and the Petition for Review filed on December 28, 2004 fell within the two-year prescriptive period.

WHEREFORE, premises considered, petitioner's **"Motion for Reconsideration/New Trial"** is hereby **PARTIALLY GRANTED** and this Court's Decision dated May 5, 2008 denying petitioner's Petition for Review is hereby **MODIFIED.** Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **ONE MILLION TWO HUNDRED TWENTY TWO THOUSAND ONE HUNDRED THIRTY TWO AND 55/100 PESOS (P1,222,132.55)**, representing petitioner's excess input taxes on its

[23] Exhibits "O-2-E" to "O-2-J".

importations and domestic purchases attributable to zero-rated sales for the fourth quarter of the taxable year 2002.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice