REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1064** (CTA Case No. 8314)
- versus-	Present: Del Rosario, *PJ*, Castañeda,Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
PHILEX MINING CORPORATION, *Respondent.*	Promulgated: AUG 13 2014 9:00 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is petitioner's Petition for Review under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals. Petitioner assails the Decision[1] and Resolution[2] of the Special First Division, promulgated on April 30, 2013 and August 14, 2013, respectively.

The petition seeks the partial nullification of the Special First Division's grant of respondent's claim for refund/tax credit of excess and unutilized input taxes for the first quarter of 2009.

[1] Docket, CTA EB Case No. 1064, pp. 25-48.
[2] Docket, pp. 49-56.

The Facts

The facts, as found by the Division, are as follows:

> "Philex Mining Corporation is a domestic corporation organized under Philippine laws, engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1997, and under Bureau of Internal Revenue (BIR) Form No. 2303 as of January 31, 1997. Petitioner [now, respondent] likewise had its Application for Zero-Rate, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95, approved effective April 12, 1998.
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> Respondent [now, petitioner] is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code. She holds office at the BIR National Office Building, Diliman, Quezon City.
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> On April 22, 2009, petitioner filed its Original VAT Return for the first quarter of 2009. On April 29, 2011, petitioner filed an Amended VAT Return, which reflected total zero-rated sales of P2,506,069,926.20, importation of goods of P360,289,376.84 with input tax of P43,234,725.22, and purchases of services of P285,077.42 with input tax of P34,209.29.
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> Relative thereto, petitioner filed its claim for refund/tax credit with the One Stop Shop (OSS) Center of the Department of Finance per Application No. 62439 in the amount of P43,268,934.51 on March 22, 2011, pursuant to Section 4.112-1 of Revenue Regulations No. 16-2005.
>
> The application for refund that petitioner filed with the OSS Center of the Department of Finance is allegedly still pending thereat, and no resolution has been issued up to the filing of the Petition for Review in this case on August 1, 2011."[3] (*citations omitted*)

After trial, the Special First Division rendered its Decision and Resolution on the Motion for Partial Reconsideration, as follows:

[3] Docket, pp. 25-26.

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED TO REFUND in favor of petitioner the reduced amount of P21,897,953.41, representing excess and unutilized input taxes for the first quarter of 2009."[4]
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> *****
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> "WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration is DENIED for lack of merit."[5]

Hence, this appeal to the Court *En Banc* by petitioner Commissioner of Internal Revenue.

Respondent Philex was ordered to file a Comment, which it filed on November 22, 2013.[6] The Court *En Banc* resolved to give due course to the petition and ordered the parties to file their simultaneous memoranda.[7]

On January 1, 2014, petitioner manifested that she is adopting the arguments raised in her Petition for Review as her Memorandum.[8] On January 22, 2014, respondent also manifested that it is adopting its comment as its Memorandum.[9] The case was then deemed submitted for decision on February 12, 2014.

Issues

The single issue raised by petitioner is as follows:

> WHETHER OR NOT THE HONORABLE SPECIAL FIRST DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO A REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P21,897,953.41, REPRESENTING EXCESS AND UNUTILIZED INPUT TAXES FOR THE FIRST QUARTER OF 2009.[10]

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[4] Docket, pp. 47-48.
[5] Docket, p. 55.
[6] Docket, pp. 63-69.
[7] Docket, pp. 71-72.
[8] Docket, p. 73.
[9] Docket, p. 77.
[10] Docket, p. 8.

Ruling of the Court

Petitioner mainly claims that the CTA Special First Division erred in granting respondent's claim for refund considering that the Special First Division had no jurisdiction on the grounds that:

1. Respondent failed to file a written claim with a categorical demand for refund; and
2. Respondent failed to submit the complete set of supporting documents relative to its claim.

Failing to file the required written claim and submit complete supporting documents within the time required, petitioner alleges that respondent's right to claim for tax refund or credit of unutilized input VAT has already prescribed.

On the other hand, respondent argues that no new matters or issues are raised in this appeal and there exists no reason to reconsider and set aside the assailed decision.

We agree with respondent. A careful perusal of petitioner's arguments compared to the arguments raised in the Court in Division reveals that said arguments are not merely similar but are exactly the same. Clearly a mere rehash of its position raised previously, these arguments have already been thoroughly considered and discussed in the assailed Decision.

The records show that respondent has filed a written claim for refund with the DOF-OSS.

Thus, we quote with approval, the Division's rationale, as follows:

> "A perusal of the BIR records show that aside from the Claimant Information Sheet filed by petitioner [now, respondent], also attached thereto are the following:
>
> 1. Petitioner's Letter dated March 1, 2011 addressed to One-Stop Shop Tax Credit and

Duty Drawback Center of the Department of Finance; and

2. Petitioner's Application for Tax Credit/Refund of Value-added Tax Paid (BIR Form No. 2552).

The above-mentioned documents readily show that petitioner indeed filed an application letter in connection with its administrative claim for refund. Moreover, the fact of filing was admitted under Paragraph 4 of the Joint Stipulation of Facts and Issues that: '4. 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 Dept. of Finance (OSS) on March 22, 2011, per Application No. 62349 for the amount of P43,268,934.51'. This admission was incorporated in the Pre-Trial Order dated May 7, 2012 under the subheading of Admitted Facts.

As regards the non-submission of supporting documents, respondent [now, petitioner] avers that petitioner failed to submit the complete supporting documents and therefore, the one hundred twenty (120)-day period within which respondent must decide pursuant to Section 112(C) of the NIRC of 1997, as amended by Republic Act (R.A.) No. 9337, has yet to commence.

Again, respondent's contention is bereft of merit.

The Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, held that it is the taxpayer and not the BIR who determines what relevant supporting documents to submit as basis of its claim, to wit:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment **as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.**"

Based on the records, considering that no written notice was subsequently sent by the BIR informing petitioner that the documents petitioner submitted on

> March 22, 2011 were incomplete, the presumption is that complete documents had been submitted by petitioner when it filed its administrative claim on March 22, 2011. Thus, the 120-day period within which respondent is required to act on petitioner's refund, started to run from March 22, 2011 or until July 20, 2011. Evidently, no action was taken by respondent on petitioner's administrative claim within the 120-day period.
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> Due to the inaction of respondent, petitioner had thirty (30) days from July 20, 2011, or until August 19, 2011, within which to seek judicial recourse, as mandated under Section 112(C) of the NIRC of 1997. Hence, on August 1, 2011, petitioner timely filed its appeal by way of a Petition for Review before this Court as the same was filed well within the 30-day period after the lapse of the 120-day period mentioned above.
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> Consequently, the instant appeal was not prematurely filed. Likewise, petitioner's administrative claim for refund has not prescribed when the same was filed on March 21, 2011, as this was prior to the prescriptive period which ended on March 31, 2011."[11](*Citations omitted*)

Considering the foregoing, the Court in Division clearly had jurisdiction to hear and decide the original Petition for Review, contrary to what petitioner asserts. The Court *En Banc* will no longer discuss the other requisites for a claim for refund, the same having been discussed extensively in the Division's Decision and not questioned on appeal.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED**. The Decision and Resolution, dated April 30, 2013 and August 14, 2013, respectively, of the Special First Division, are hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[11] Docket, pp. 38-39.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice