REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1138** (CTA Case No. 8357)
	Present:
-versus-	**Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas,** and **Ringpis-Liban, JJ.**
PHILEX MINING CORPORATION *Respondent.*	**Promulgated**: JUL 29 2015 3:40 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.*:

This resolves the *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) on April 4, 2014, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503[2], which seeks the reversal and setting aside of the October 29, 2013 *Decision*[3] and February 26, 2014 *Resolution*[4] enunciated by

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[1] *Rollo*, pp. 6-16.
[2] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."
[3] *Rollo*, pp. 18-42.
[4] *Rollo*, pp. 44-52.

the Special First Division of the Court of Tax Appeals (CTA) in CTA Case No. 8357, entitled "*Philex Mining Corporation, vs. Commissioner of Internal Revenue*".

The dispositive portions of the assailed *Decision* and *Resolution* read:

Decision[5] dated October 29, 2013:

> "**WHEREFORE,** in view of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of Philex Mining Corporation, the reduced amount of **TWENTY-SIX MILLION TWO HUNDRED TWENTY-TWO THOUSAND EIGHT HUNDRED NINETY-FOUR and 35/100 PESOS (P26,222,894.35)**, representing petitioner's excess input VAT attributable to its zero-rated sales for the second quarter of 2009."

Resolution[6] dated February 26, 2014:

> "**WHEREFORE,** in light of the foregoing considerations, both Motions for Reconsideration are **DENIED** for lack of merit."

FACTS OF THE CASE

The facts as culled from the *Decision* of the Special First Division are as follows:

> "Petitioner [Respondent herein] 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, consisting of gold bullion and copper ore concentrates. Its principal office is located at 27 Brixton St., Pasig City. Also, petitioner 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. It likewise has a duly approved Application for Zero-Rate effective April 12,

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.

1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.

Respondent [Petitioner herein], on the other hand, is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund and tax credit of taxes erroneously or illegally collected. She holds office at the BIR National Office Building, Diliman, Quezon City.

On July 15, 2009, petitioner filed its original Quarterly VAT Return for the second quarter of 2009. Petitioner subsequently filed an amended Quarterly VAT Return on May 18, 2011, which reflected total zero-rated sales of P1,781,765,653.73, importation of goods of P215,255,275.00 with input tax of P25,830,633.00, and purchases of services of P37,321,662.50 with input tax of P4,478,799.50.

On June 15, 2011, pursuant to Section 4.112-1 of RR No. 16-2005, petitioner filed its claim for refund or tax credit with the One-Stop-Shop Center (OSSC) of the Department of Finance (DOF), per Application No. 62440 for the amount of P30,309,232.50.

Due to respondent's inaction on the said administrative claim for refund, petitioner filed the present Petition for Review on October 19, 2011.

Respondent filed her Answer thereto on December 19, 2011, interposing the following special and affirmative defenses:

> "SPECIAL AND AFFIRMATIVE DEFENSES
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> 4. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by the respondent;
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> 5. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
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> 6. Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with the following, viz.:
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> A. The registration requirements of a Value-Added taxpayer under the pertinent provision of the

National Internal Revenue Code (NIRC) of 1997, 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 National Internal Revenue Code (NIRC) of 1997, 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 National Internal Revenue Code (NIRC) of 1997, 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 P30,309,232.50 allegedly representing excess and unutilized input taxes for the 2nd Quarter of 2009, were:

1. Paid by petitioner;

2. Attributable to its zero-rated or effectively zero-rated sales; and

3. Such input taxes paid should not have been applied against any output tax.

E. The petitioner's claim for tax refund allegedly representing excess and unutilized input taxes for the 2nd Quarter of 2009 in the amount of P30,309,232.50 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 National Internal Revenue Code (NIRC) of 1997, as amended.

7. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims and of showing, by words too plain to be mistaken, that the legislature intended to exempt them;

> 8. And 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. 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 too plain to be mistaken and too categorical to be misinterpreted." (Citations omitted)

In the assailed *Decision*[7] dated October 29, 2013, the Court in Division partially granted the claim for input VAT refund of respondent herein Philex Mining Corporation (PHILEX). Accordingly, petitioner CIR was ordered to refund in favor of PHILEX the amount of P26,222,894.35, representing PHILEX's excess input VAT attributable to its zero-rated sales for the second quarter of 2009.

The Court in Division denied for lack of merit the Motions for Reconsideration of both parties in its *Resolution*[8] dated February 26, 2014.

Hence, the filing of the instant *Petition for Review*[9].

After considering the issues raised by the CIR in her *Petition for Review* and the arguments of PHILEX in its Comment[10] filed on May 26, 2014, this Court resolved to give due course to the instant *Petition for Review* and subsequently submitted the same for decision in the Resolution dated November 20, 2014.

ISSUE

Whether respondent PHILEX is entitled to the refund or tax credit of the alleged excess and unutilized input taxes in the total amount of Php26,222,894.35 for the 2nd Quarter of 2009.

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[7] *Supra*, Note 3.
[8] *Supra*, Note 4.
[9] *Supra*, Note 1.
[10] *Rollo*, pp.59-64.

Arguments of Petitioner CIR[11]

In the instant *Petition for Review*, the CIR interposed that: PHILEX failed to maintain a subsidiary sales journal and subsidiary purchase journal required under Section 4.113-3 of RR No. 16-2005, as only the general ledger became the basis for comparison of the amounts of zero-rated sales and input taxes in the ICPA's report; and that the requirements of Section 114 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 4.114-1 (A) of RR No. 16-2005 regarding the filing and payment of the monthly VAT Declarations (BIR Form 2550M) of large and non-large taxpayers were not proven with certainty considering that the ICPA only certified the quarterly returns of PHILEX but not the requirement of filing and payment of the monthly VAT Declarations.

In her *Memorandum*, the CIR added the allegations that: respondent PHILEX failed to prove that it complied with the requirements of Section 4.113-1 of Revenue Regulations (RR) No. 16-2005, which provides for the Invoicing Requirements. The CIR also pointed out that, as stated in page one (1) of the Attachment section of the Independent Certified Public Accountant's (ICPA) report, only 3 out of 14 information – required to be contained in the VAT Invoice or VAT Official Receipt under Revenue Memorandum Circular (RMC) No. 62-2005 – were noted by the ICPA, specifically: PHILEX's taxpayer's identification number; the words "zero-rated"; and BIR's permit to print. Further, PHILEX failed to prove with certainty that it complied with the submission of complete documents in support of its application for refund; and that the full amount of Php30,309,232.50 allegedly representing excess and unutilized input taxes for the 2nd Quarter of 2009 were not supported by official receipts.

Arguments of Respondent PHILEX[12]

In response to the allegations in the subject *Petition*, Respondent PHILEX argues that it had complied with the accounting and reportorial requirements, however, it did not

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[11] *Rollo*, pp. 10-12, Petition for Review; and pp. 76-83, Memorandum of Petitioner.
[12] *Rollo*, pp.60-64, Comment of Respondent.

have to prove them before the Court simply because they are not required by the law [Section 112 (A) of the 1997 NIRC, as amended] to be proven as a requisite to be entitled to the refund of unutilized input VAT that is attributable to zero-rated sales.

PHILEX stresses that: the Special First Division of the CTA has found that it was able to comply with all the requisites prescribed in Section 112 of the 1997 NIRC, as amended; the position of the CIR requiring compliance with two additional requirements, namely: (1)maintain a subsidiary sales journal and subsidiary purchase journal, and (2) file monthly VAT declarations, is without legal basis since it is Section 112 which specifies the requisites that a claimant must comply to be entitled to the refund.

RULING OF THE COURT *EN BANC*

The Court has observed that the points and arguments in the present *Petition for Review* had already been painstakingly discussed and substantially resolved by the CTA Special First Division in its October 29, 2013 *Decision*[13] and February 26, 2014 *Resolution*[14].

Non-submission of subsidiary sales journal, subsidiary purchase journal and monthly VAT declarations before this Court is not sufficient to deny a claim for input VAT refund

The requirements for refund or tax credit certificate of input tax attributable to zero-rated or effectively zero-rated sales are delineated in Section 112 (A) of the 1997 NIRC, as amended. As consistently held by the Court *En Banc*, there is nothing in the afore-mentioned provision of the 1997 NIRC, as amended, which requires the presentation of the subsidiary sales journal, subsidiary purchase journal, and monthly VAT declarations in order that a taxpayer may be entitled to refund or issuance of tax credit certificate of its claimed input tax

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[13] *Supra*, Note 3.
[14] *Supra*, Note 4.

attributable to zero-rated sales.[15] In order to be entitled to a refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales, only the following requisites must be complied with:

> 'a) the taxpayer is VAT-registered;
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> b) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
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> c) the input taxes are due or paid;
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> d) the input taxes are not transitional input taxes;
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> e) the input taxes have not been applied against output taxes during and in the succeeding quarters;
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> f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
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> g) for zero-rated sales under Sections 106 (A) (2) (1) and (2); 106 (B); and 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;
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> 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 [sic] to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
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> i) the claim is filed within two years after the close of taxable quarter when such sales were made.'[16]

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[15] *Commissioner of Internal Revenue v. Philex Mining Corporation,* CTA EB No. 1116, January 7, 2015.
[16] *Supra; Luzon Hydro Corporation vs. Commissioner of Internal Revenue,* G.R. No. 188260, November 13, 2013.

A perusal of the records of this case discloses that respondent PHILEX was able to prove its compliance with the aforementioned requirements for refund by submitting satisfactory documents/proof of its entitlement to a tax refund or issuance of tax credit certificate, representing unutilized excess input VAT attributable to its zero-rated receipts for the second quarter of 2009, albeit in the reduced amount of P26,222,894.35.

Verily, the Court *En Banc* affirms the Court in Division's pronouncement that even without offering in evidence petitioner's subsidiary sales journal, subsidiary purchase journal, and monthly VAT declarations, the said non-submission should not be considered as a ground to deny PHILEX's judicial claim for refund.

Non-submission of complete documents in the administrative level is not fatal to a judicial claim for refund

Petitioner CIR reiterates her contention that PHILEX's claim must be denied because it failed to prove with certainty that it complied with the submission of complete documents in support of its application for refund.

CIR's contention is devoid of merit.

First, as aptly found by the Court in Division, there is nothing on record which shows that CIR informed PHILEX of its failure to submit supporting documents and required the same to submit additional documents to support the administrative claim for input VAT refund. If PHILEX indeed failed to submit complete supporting documents in the administrative level, the CIR could have simply denied the administrative claim and not allow the lapse of the 120-day period without action on her part. Hence, pursuant to the following provision of Revenue Memorandum Circular No. 029-09, the 120-day period commenced and continued to run from June 15, 2011, the date when PHILEX filed its administrative claim:

> "III. *Period within which Refund or Tax Credit of Input Taxes shall be Made*
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> Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents**. For the purpose of defining 'proper cases' in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
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> a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
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> xxx xxx xxx
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> **In cases where taxpayer failed to comply with the above conditions/requirements**, *i.e.,* failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of <u>notification</u> to the taxpayer**. xxx. (*Emphasis supplied*)"

Second, this Court has consistently upheld the long-standing rule that in claims for VAT refund, the alleged non-submission of complete supporting documents in the administrative level is not fatal to petitioner's judicial claim. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[17]

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[17] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.,* CTA EB Case No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company,* CTA EB Case No. 589, September 15, 2010; *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,* CTA EB Case No. 775, November 13, 2012.

PHILEX'S VAT invoice or VAT official receipts contain the required information; official receipts were submitted to support the input VAT claim

Petitioner CIR insists that PHILEX's claim for refund or tax credit of input VAT must be denied on the grounds that: only 3 out of 14 information – required to be contained in the VAT Invoice or VAT Official Receipt under Revenue Memorandum Circular (RMC) No. 62-2005 – 'were noted' by the ICPA; and the unutilized input taxes for the 2nd Quarter of 2009 were not supported by official receipts.

The Court is not inclined to indulge the CIR in its argument.

An examination of the records belies the CIR's claim. The argument that only 3 out of 14 information 'were noted' by the ICPA in its report does not mean that there were indeed only 3 information in PHILEX's VAT invoices and VAT official receipts. A perusal of PHILEX's VAT invoices and VAT official receipts[18] shows that these contain the necessary information required under (RMC) No. 62-2005, *e.g.,* name of petitioner, name of supplier, taxpayer's identification number of the supplier, the BIR's permit to print, date of transaction, taxable amount, input vat.

Further, the allegation that PHILEX'S unutilized input taxes for the 2nd Quarter of 2009 were not supported by official receipts is bereft of merit. PHILEX's official receipts[19] for domestic purchases of services covering the 2nd Quarter of 2009 were properly identified[20], examined and listed by the ICPA, formally offered[21] by PHILEX and admitted[22] by the Court in Division.

In light of the foregoing, the Court *En Banc* finds no compelling reason to deviate from the conclusions arrived at

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[18] Exhibits "K-1" to "K-128".
[19] *Supra,* Note 18.
[20] Exhibit "C", *Division Docket* pp.157-161.
[21] *Division Docket,* pp. 165-168.
[22] *Division Docket,* p. 178.

by the Court in Division in partially granting refund as the same is supported by pieces of evidence, which substantiates PHILEX'S compliance with the requirements for refund of its claimed input tax attributable to zero-rated sales for the second quarter of 2009.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED**. The October 29, 2013 *Decision*[23] and February 26, 2014 *Resolution*[24] of the CTA Special First Division in CTA Case No. 8357, are hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[23] *Supra*, Note 3.
[24] *Supra*, Note 4.

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

(On Leave)
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were 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