

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

**FORMER SECOND DIVISION**

PHILEX MINING CORPORATION,  
Petitioner,

C.T.A. CASE NO. 7753

Members:

- versus -

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

COMMISSIONER OF INTERNAL  
REVENUE,

Promulgated:

Respondent.

MAR 17 2010

✓ 1:55 p.m.

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**DECISION**

**CASTAÑEDA, JR., *J.*:**

This is a Petition for Review filed by petitioner on April 9, 2008, to seek the refund of the amount of P10,188,692.14, allegedly representing petitioner's excess and unutilized input value-added tax (VAT) for the first quarter of taxable year 2006.

Philex Mining Corporation (Petitioner) is a domestic corporation organized under Philippine laws, with principal office at Brixton Street corner Fairlane Street, Pasig City.<sup>1</sup> It is engaged in the mining business, including the exploration and operation of mine properties and the commercial *re*

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<sup>1</sup> Annex "A", Petition for Review, docket. p. 6

production and marketing of mine products.<sup>2</sup> It is VAT-registered effective October 29, 1987 under VAT Registration Certificate No. 35-6-000731<sup>3</sup> and as of January 31, 1997 under BIR Form No. 2303<sup>4</sup>, with TIN No. 000-283-731-000.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to exercise the functions of said office, including *inter alia*, the power to decide claims for refund of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On January 15, 1988, petitioner filed an Application for Zero-Rate<sup>5</sup> before the Bureau of Internal Revenue, which was later approved effective April 12, 1988.

Petitioner argued that its export sales of mineral products to foreign buyers for the first quarter of 2006 were subject to zero percent (0%) tax rate, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

On April 24, 2006, petitioner filed its original Quarterly VAT Return for the first quarter of 2006.<sup>6</sup> On February 21, 2008, petitioner amended the said Quarterly VAT Return<sup>7</sup>, which reflected total zero-rated sales of P2,094,210,052.30 and total input tax in the amount of P10,188,692.14. *jr*

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<sup>2</sup> Par. 1, Summary of Facts Admitted, Stipulation of Facts and Issues, docket p. 40

<sup>3</sup> Annex "A", Petition for Review, docket, p. 6

<sup>4</sup> Annex "A-1", Petition for Review, docket, p. 7

<sup>5</sup> Annex "A-2", Petition for Review, docket, p. 8; par. 2, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 40

<sup>6</sup> Exhibit "B"

<sup>7</sup> Exhibit "B-1"

On June 20, 2007, petitioner filed its claim for refund/tax credit in the amount of P10,188,692.14 with the One-Stop Shop Center of the Department of Finance via Application No. 54764.<sup>8</sup>

Since respondent has not issued a final decision on petitioner's administrative claim, petitioner filed the instant Petition for Review on April 9, 2008, in order to toll the running of the two-year period to judicially claim a tax refund/credit as provided in Section 229 of the NIRC of 1997.

In his Answer<sup>9</sup> filed on June 12, 2008, respondent interposed the following Special and Affirmative Defenses:

"6. The claim for refund is still under examination by the respondent's Bureau;

7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;

8. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

During trial, petitioner presented documentary and testimonial evidence in support of its refund claim. Petitioner filed its Formal Offer of Evidence<sup>10</sup> on June 9, 2009, submitting Exhibits "A" to "J", which was thereafter admitted in a Resolution<sup>11</sup> dated July 29, 2009. During the October 5, 2009 hearing, respondent, through counsel, submitted the case *je*

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<sup>8</sup> Par. 5, Summary of Facts Admitted, Stipulation of Facts and Issues, docket, p. 41

<sup>9</sup> Docket, p. 25

<sup>10</sup> Docket, pp. 117-121

<sup>11</sup> Docket, pp. 123-124

for decision after manifesting that he has not received any reply from the One-Stop Shop of the Department of Finance regarding the report of investigation of the case.<sup>12</sup>

On November 13, 2009, the case was submitted for decision, considering petitioner's Memorandum filed on October 29, 2009, and the report of this Court's Records Division that respondent failed to file a memorandum.<sup>13</sup>

The following are parties' jointly stipulated issues<sup>14</sup> submitted for this Court's resolution:

- "1. Whether or not Petitioner's domestic purchases and importations of goods which are attributable to its export sales for the 1<sup>st</sup> quarter of 2006, are duly supported by documentary evidence.
2. Whether Petitioner made direct exports of mineral products during the same period.
3. Whether or not the accumulated or excess input VAT was not utilized or applied by Petitioner against output VAT in the 1<sup>st</sup> quarter of 2006 or in the succeeding quarters or taxable years.
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 Banko Sentral ng Pilipinas.
5. Whether or not Petitioner is entitled to the refund of the excess input taxes in the total amount of Php10,188,692.14 for the 1<sup>st</sup> quarter of 2006 paid for the purchase of goods and services due to Petitioner being a producer and exporter of mineral products." *Jr*

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<sup>12</sup> Docket, p. 128

<sup>13</sup> Docket, p. 148

<sup>14</sup> Docket, pp. 41-42

Before addressing the foregoing stipulated issues, it is imperative to first determine the timeliness of the filing of the instant Petition. Section 112(A) of the NIRC 1997, as amended provides:

“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.” (*Emphasis supplied*)

The afore-quoted provision was later given an unequivocal interpretation by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*<sup>15</sup>, the pertinent portion of which states:

“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 *gr*”

<sup>15</sup> G.R. No. 172129, September 12, 2008.

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

Further, in a more recent decision of the Supreme Court in the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue* (*San Roque case*)<sup>16</sup>, petitioner *San Roque* filed its judicial claim for refund on April 5, 2004 of its unutilized input VAT for the period covering January to December 2002. In determining the reckoning of the two-year prescriptive period for filing a claim for refund of input VAT, the Supreme Court held:

**"The last requirement determines that the claim should be filed within two years after the close of the taxable quarter when such sales were made.** The sale of electricity to NPC was reported at the fourth quarter of 2002, which closed on 31 December 2002. Petitioner had until 30 December 2004 to file its claim for refund or credit. For the period January to March 2002, petitioner filed an amended request for refund or tax credit on 30 May 2003; for the period July 2002 to September 2002, on 27 February 2003; and for the period October 2002 to December 2002, on 31 July 2003. In these three quarters, petitioners seasonably filed its requests for refund and tax credit. However, for the period April 2002 to May 2002, the claim was filed prematurely on 25 October 2002, before the last quarter had closed on 31 December 2002." (*Emphasis supplied*)

Pursuant to the foregoing provision and jurisprudence, the two-year prescriptive period for filing a claim for refund of input VAT must be reckoned from the close of the taxable quarter when the pertinent sale or transaction was made. *jr*

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<sup>16</sup> G.R. No. 180345, November 25, 2009.

In this case, petitioner seeks the refund of its unutilized input tax for the first quarter of 2006. The close of the first taxable quarter of 2006 was March 31, 2006. Counting from said date, petitioner should have filed its administrative and judicial claims for refund by March 31, 2008. While the administrative claim for refund was filed on June 20, 2007, well within the two-year prescriptive period, the judicial claim for refund was belatedly filed on April 9, 2008. Thus, petitioner is now barred from claiming its alleged unutilized input tax for the first quarter of 2006.

Since the claim for refund was already barred by prescription, the resolution of the remaining issues is now deemed moot.

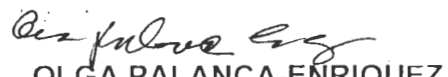
**WHEREFORE**, the instant Petition for Review is hereby **DENIED** on the ground of prescription.

**SO ORDERED.**

  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice

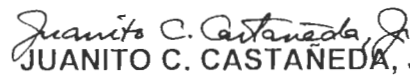
WE CONCUR:

  
**ERLINDA P. UY**  
Associate Justice

  
**OLGA PALANCA-ENRIQUEZ**  
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

  
**JUANITO C. CASTANEDA, JR.**  
Acting Presiding Justice  
Chairperson, 2<sup>nd</sup> Division