REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILEX MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7063

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

FEB 24 2009 2:09 pm

x --- x

DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

The instant Petition for Review seeks for the refund of petitioner's input Value Added Tax on importations and domestic purchases that is attributable to zero rated sales for the 3rd quarter of 2002 amounting to P9,322,964.05.

STATEMENT OF FACTS

Petitioner Philex Mining Corporation is a corporation organized and existing under Philippine laws, with principal office address at 27 Brixton St., Pasig City.[1]

Respondent Commissioner of Internal Revenue is the government official charged with the administration and enforcement of the national internal revenue laws, including the

[1] Petition for Review, Rollo, p.1.

granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code, with address at the BIR National Office, Quezon City.[2]

Petitioner is a VAT registered taxpayer. It is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products.[3]

During the third quarter of 2002, petitioner allegedly sold and shipped its gold bullion production and part of its copper concentrates production to buyers in foreign countries, such as the Pan Pacific Copper Co. of Tokyo, Japan. The remaining part of the copper concentrates were allegedly sold to Philippine Associated Smelting and Refining Corporation (PASAR), an enterprise registered with the Philippine Economic Zone Authority (PEZA)[4]. The said export sales were allegedly paid in acceptable currency and were accounted for in accordance with the rules and regulation of the Bangko Sentral ng Pilipinas (BSP). Petitioner further alleged that the said export sales were subjected to zero percent (0%) tax rate pursuant to Section 106 (A)(2)(a)(1) of the National Internal Revenue Code of 1997. Petitioner (NIRC of 1997) claimed total direct and indirect export sales for the said quarter in the amount of P890,131,283.50.[5]

Petitioner likewise stated that it purchased domestic goods in the amount of P4,432,200.50 and imported capital goods in the amount of P88,797,440.00 for use in the mining operations and in the production and sale of its mine products also in the third quarter of 2002. It allegedly paid input taxes on such domestic purchases and importations in the amounts of P443,220.05 and P8,879,744.00, respectively or the aggregate amount of P9,322,964.05.[6]

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[2] Ibid.
[3] Stipulation of Facts and Issues, Rollo, p.57
[4] Ibid, Rollo, p. 58.
[5] Petition for Review, Rollo, p.2. Exhibit "A".
[6] Ibid.

Petitioner filed its VAT return for the 3rd quarter of 2002 on October 24, 2002 stating the following: total zero-rated sales amounting to P890,131,283.50, domestic purchases of goods amounting to P4,432,200.50 with input tax of P443,220.05, and importation of capital goods of P88,797,440.00 with input tax of P8,879,744.00.[7] Petitioner filed an Amended Return for the 3rd quarter on March 23, 2004 to adjust its zero-rated sales to P909,058,074.90.[8]

Petitioner said that since its sales of its mine products were zero-rated there was no output VAT against which the petitioner could apply or use its input tax; neither was the same used or applied against any output tax in the succeeding quarters of the year. Hence, the said input taxes paid by petitioner were refundable pursuant to Section 112 (A) of the Tax Code. [9]

Believing that its input taxes are refundable, petitioner filed its Application for Tax Credit or Refund of VAT Paid[10] dated March 8, 2004 for the period July 1, 2002 to September 30, 2002 amounting to P9,322,964.05. Petitioner also filed a claim for refund with the One Stop Shop (OSS) Center of the Department of Finance on March 25, 2004.[11]

To date, no resolution has been issued by the OSS and the respondent Commissioner of Internal Revenue. hence, this petition was filed on September 30, 2004.

Respondent interposed the following Special and Affirmative Defenses in his Answer[12], to wit:

> "4. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of an exemption;
>
> 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;

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[7] Exhibit "A".
[8] Exhibit "A-1".
[9] Petition for Review, Rollo, p.3-4.
[10] Stipulation of Facts and Issues, Par. 3, Rollo, p. 57
[11] Ibid, Par. 4
[12] Rollo, pp. 39-40.

6. The petitioner should prove that its legal basis for claiming for the amount being refunded."

After trial on the merits, this case was submitted for decision on July 14, 2008 considering petitioner's Memorandum filed on June 27, 2008 sans respondent's memorandum.

STATEMENT OF ISSUES

The jointly stipulated issues[13] of the parties include, to wit:

1. Whether or not petitioner's export sales to its buyers are subject to VAT at zero percent (0%);

2. Whether petitioner's domestic purchases and importations of goods which are attributable to its direct and indirect export sales for the third quarter of 2002 are duly supported by documentary evidence;

3. Whether the accumulated or excess input VAT was not utilized or applied by petitioner against output VAT in the same 3rd quarter of 2002 or in the succeeding quarter or taxable year;

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 Bangko Sentral ng Pilipinas; and

5. Whether or not petitioner is entitled to the refund of the excess input taxes in the total amount of P9,322,964.05 for the third quarter of 2002, due to petitioner being an exporter of mineral products.

THE COURT'S RULING

The issues being interrelated shall be decided concurrently.

The petition is partly meritorious.

Section 112 (A) of the NIRC of 1997 lays down the requisites for refunds or issuance of a tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads as follows:

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[13] Stipulation of Facts and Issues, Rollo, pp. 58-59.

> "**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. xxx"

From the foregoing, petitioner must comply with the following requisites to be entitled to a refund:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT payments were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

To comply with the first requisite, petitioner states that its shipments and sales of copper concentrates and gold to Pan Pacific Copper Co. of Tokyo, Japan and the BSP are VAT zero-rated pursuant to Sections 106(A)(2)(a)(1) and (a)(4) of the NIRC of 1997. Likewise, petitioner claims that its sales of copper concentrates to PASAR, a PEZA registered enterprise, are subject to zero percent (0%) VAT. Petitioner anchors its claim on Section 106(A)(2)(a)(5) of the NIRC of 1997 in relation to Section 23 of Republic Act (R.A.) No. 7916, Revenue Memorandum Circular (RMC) No. 74-99 and BIR VAT Review Committee Ruling No. 026-2001.

The Court-commissioned Independent CPA in his Report[14] noted that petitioner's zero-rated export sales as reported in its original VAT return for the 3rd quarter of 2002[15] amounted to US$17,506,246.00[16], the details of which are as follows:

[14] Exhibit "G".
[15] Exhibit "A" (Note: The zero-rated sales as per amended VAT return for the 3rd quarter of 2002 amounts to P909,058,074.90 [Exhibit "A-1"]).
[16] the peso value equivalent of which is P890,131,283.50

Current Quarter's Shipments:	
Direct exports of copper to Japan:	US$13,313,940.00
Indirect Exports of:	
Copper to PASAR	4,196,040.00
Gold to Bangko Sentral ng Pilipinas (BSP)	112,131.00
	US$17,622,111.00
Previous Quarters' Shipments	
Adjustment to correct previous billings	(115,865.00)
Total Zero-Rated Sales	**US$17,506,246.00**

To prove its direct and indirect export sales for the 3rd quarter of taxable year 2002 and that the foreign currency proceeds thereof were duly accounted for in accordance with the rules and regulations of the BSP, petitioner presented its sales invoices[17], export declarations[18], bills of lading[19], certificate of loading[20], reception notes[21], certificate of remittances issued by local banks[22], BSP payment advices[23] and entries in petitioner's passbooks in local banks[24].

At the outset, it appears that petitioner's direct exports of copper concentrates to Japan and of gold to the Bangko Sentral ng Pilipinas fall within the transactions referred to as subject to zero percent (0%) VAT under Sections 106(A)(2)(a)(1) and (a)(4) of the NIRC of 1997, which reads as follows:

> "**SEC.106.** ***Value-Added Tax on Sale of Goods or Properties.—***
>
> **(A)** ***Rate and Base of Tax.—*** xxx
>
> xxx
>
> (2) The following sales by VAT-registered persons shall be subject to a zero percent (0%) rate:

[17] Exhibits "H-1" to "H-8".
[18] Exhibits "H-1-a" to "H-3-a".
[19] Exhibits "H-1-b" to "H-3-b".
[20] Exhibits "H-4-b" to "H-6-b".
[21] Exhibits "H-7-b" to "H-8-b".
[22] Exhibits I-1 to I-4.
[23] Exhibits I-5 to I-6.
[24] Exhibits I-1-a to I-4-b.

(a) *Export Sales.* — The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

xxx

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP);

xxx

However, the aforesaid section should be read in conjunction with Section 113 of the same Code, and as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, which prescribes that a VAT registered person like petitioner, shall for every sale, issue an invoice or receipt which must contain the following information:

"SEC.113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*—

(A) *Invoicing Requirements.*—A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

"SECTION 4.108-1. *Invoicing Requirements* – All VAT registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Section 100 and 102 of the Code."

xxx

Moreover, the invoice or receipt issued must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, to wit:

"**SEC.237.** ***Issuance of Receipts or Sales or Commercial Invoices.***—All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx"

"**SEC.238.** ***Printing of Receipts or Sales or Commercial Invoices.***-- All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

xxx"

From the foregoing, any person claiming VAT zero-rated direct export sales must present at least three documents, to wit: 1) the sales invoice as proof of sale of goods; 2) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and 3) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. Simply put, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) and (a)(4) of the NIRC of 1997.

Further, petitioner's sales invoices supporting the export sales must comply with the invoicing requirements under the law and regulations, i.e., it must be duly registered with the BIR and it must contain all the required information, to wit: 1) the imprinted word "zero-rated"; and 2) the taxpayer's TIN-VAT number.

A perusal of petitioner's export invoices [25], export declarations [26] and bank remittances [27] reveals that it actually sold and shipped copper concentrates to Japan amounting to US$13,313,940.00, and in consideration thereof, petitioner received foreign currency payments. The said foreign exchange proceeds were in accordance with the rules and regulations of the Bangko Sentral nf Pilipinas.

Clearly, petitioner was able to prove that its export sales for the 3rd quarter of 2002 to Japan are subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997.

Anent petitioner's indirect export sales of gold to the Bangko Sentral ng Pilipinas (BSP) amounting to US$112,131.00, the same cannot qualify for VAT zero-rating.

The sales invoices[28] supporting petitioner's indirect export sales show that the same are not duly registered with the BIR which is in violation of Section 238 of the NIRC of 1997. As per BIR Permit No. OCN3AU0000030052 dated April 19, 1999, petitioner is authorized to print sales invoices bearing serial numbers from PX2101 to PX2500 [29]. However, an examination of the invoices supporting petitioner's indirect export sales of gold amounting to US$112,131.00 shows that such bore serial numbers Aurex 101 and Aurex 102. Clearly,

[25] Exhibits "H1" to "H3".
[26] Exhibits "H-1-a" to "H-3-a".
[27] Exhibits "I-2-c" to "I-3-a".
[28] Exhibits "H-7" to "H-8".
[29] Reflected in sales invoices marked as Exhibits "H-1," "H-2," "H-3," "H-4," "H-5" and "H-6".

such invoices were printed outside petitioner's authority to print. Moreover, the word "VAT" after petitioner's TIN was not imprinted in the same invoice. Thus, for petitioner's failure to substantiate its indirect export sales of gold to the Bangko Sentral ng Pilipinas (BSP) with its proper VAT sales invoices, the same cannot qualify for VAT zero-rating.

With respect to petitioner's indirect export sales to PASAR amounting to US$4,196,040.00, petitioner anchors its claim on Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, which reads as follows:

> "**SEC. 106.** ***Value-added Tax on Sale of Goods or Properties.*** —
>
> (A) xxx
> (1) xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
> (a) *Export Sales.* — The term '*export sales*' means:
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

To determine whether or not sales by a VAT taxpayer from the Customs Territory to a PEZA entity are considered export sales, Executive Order (E.O.) No. 226, otherwise known as the Omnibus Investments Code of 1987, provides:

> "ARTICLE 23. "Export Sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents: Provided, further, That without actual exportation the following shall be considered "constructively exported" for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones**; . . . " *(emphasis supplied)*

"ARTICLE 77. Tax Treatment of Merchandise in the Zone. —

(1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) **Merchandise purchased by a registered zone enterprise from the custom$ territory and subsequently brought into the zone, shall be considered as export sales and the exported thereof shall be entitled to the benefits allowed by law for such transaction.**" (emphasis supplied)

Revenue Memorandum Circular 74-99 dated October 15, 1999 also provides:

"**SECTION 3.** *Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise.-*

xxx

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. **Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5) , NIRC , in relation to Art. 77(2) of the Omnibus Investments Code**, while all sales of services to the said enterprises, made by VAT registered supplies from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the Cross Border Doctrine of the VAT system.

   This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular." (emphasis supplied"

Clearly, from the foregoing, indirect exports made by a VAT taxpayer like petitioner to a PEZA registered entity are entitled to the zero percent (0%) VAT rate. Also, petitioner was able to substantiate its claim by proper VAT sales invoices[30] its indirect exports to PASAR in the amount of US$4,196,040.00.

To reiterate, out of petitioner's reported zero-rated sales of US$17,506,246.00 for the 3rd quarter of 2002, only the amount of US$17,394,115.00 export sales, with Philippine currency equivalent of P903,303,591.24[31] qualifies for VAT zero rating, computed as follows:

Particulars	Amount
Current Quarter's Shipments:	
Direct exports of copper to Japan:	US$13,313,940.00
Indirect Exports of copper to PASAR	4,196,040.00
Total	US$17,509,980.00
Previous Quarters' Shipments	
Adjustment to correct previous billings	(115,865.00)
Total Zero-Rated Sales	**US$17,394,115.00**

Let us now determine whether or not petitioner's input taxes concerning its zero-rated sales for the 3rd quarter of 2002 are duly substantiated. In its VAT return for this period[32], petitioner reflected an input VAT of P443,220.05 on domestic purchases and an input VAT of P8,879,744.00 on importations totaling to P9,322,964.05, as shown below:

	Purchases	Input Tax
Domestic Purchases - Goods other than Capital Goods	P 4,432,200.50	P 443,220.05
Importations - Goods other than Capital Goods	88,797,440.00	8,879,744.00

[30] Exhibits "H-4" to "H-6".
[31] Reported Zero-Rated Sales P909,058,074.90
Less: Sales to BSP
Inv No.AU101 P2,016,988.78
Inv No.AU102 3,737,494.88 5,754,483.66
Substantiated Zero-Rated Sales P903,303,591.24
(Note: The foreign exchange rates used for Invoice Nos.AU101 and AU102 were 51.30 and 51.33, respectively, as per Exhibits I-5 and I-6).
[32] Exhibit "A-1".

As to petitioner's input taxes on domestic purchases for the 3rd quarter of 2002, the Court-commissioned ICPA in his report dated July 20, 2006 noted the following findings:

	Particulars	Amount
a	Supported by VAT Official receipts in the Company's name	P 12,271.79
b	Supported by machine validated receipts not in the Company's name	124.15
c	Supported by Non-VAT Official Receipts in the Company's name	2,681.43
d	No supporting VAT Official Receipts presented	421,615.98
e	Supported by VAT Invoices in the Company's name	316.36
f	Supported by documents other than VAT Invoices	6,213.34
	TOTAL	**P 443,223.05**

From the foregoing, out of the total input VAT of P443,223.05, only the amount of P12,588.15 was duly substantiated *(sum of items a and e)* and the amount of P430,634.90 *(sum of items b, c, d and f)* should be disallowed.

However, the amount of P12,588.15 duly substantiated by the petitioner is not entirely allowable as input tax credit.

Pursuant to Revenue Memorandum Order No. 9-00, 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 under Section 3 of Revenue Memorandum Order No. 9-00, 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."

In the instant case, a perusal of the records reveals 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, CTA Case No.6489, August 7, 2007***, which states:

> "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"

Further, 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*[33]. This Court takes judicial notice of such finding.

Section 3.4 of Revenue Memorandum Order No. 9-00 states that 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. Thru the said Certification, no output tax should be shifted by the local suppliers to petitioner. Thus, 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 P12,588.15, as input tax credits on its domestic purchases for the 3rd quarter of taxable year 2002.

[33] CTA Case No.6828

As to the input VAT payment of P8,879,744.00 on petitioner's importations, this Court finds that only the amount of P6,735,530.00 constitutes a valid claim; the same was directly paid to the Bureau of Customs and are duly covered by official receipts. The details of which are as follows:

Items Imported	Exhibit No.	Input VAT
Parts for ball mill	J-9	P 367,370.00
1 Colli Deutz Spare Parts	J-15	9,565.00
Parts for Concentrate	J-16	42,471.00
Engine	J-21	753,986.00
Parts for Flotation Machine	J-22	524,103.00
Lead Compressor	J-23	25,673.00
Flat Rock reels belt	J-29	780,923.00
Isobutyl Xanthate	J-37	133,764.00
DK Froth BP-3	J-38	127,913.00
Dowfroth	J-39	110,236.00
268 Drums Isobutyl Xanthate	J-40	137,361.00
2 units LHD Model ST7.5 Sccoptrams	J-44	3,722,165.00
Total		**P 6,735,530.00**

This Court disallows the remaining amount of P2,144,214.00 since the Import Entry and Internal Revenue Declarations[34] supporting such importations were not admitted as part of petitioner's documentary evidence thus, failing to comply with the Best Evidence Rule.[35] In addition thereto, the Bank Debit Advices[36] are inadmissible as evidence since these failed to indicate the actual input VAT payments. Furthermore, no official receipts or other documents proving actual payment of VAT on the imported goods were presented by the petitioner to support such claim.

As per requirement of Section 4.104-5 (b) of Revenue Regulations No. 7-95, the claimed input VAT payments must be supported by VAT invoices or official receipts.

[34] Exhibits "J-4-a" to "J-43-a".
[35] Resolution dated March 8, 2008, Rollo, page 169.
[36] Exhibits "J-4" to "J-8", "J-10" to "J-14", "J-17" to "J-20", "J-24" to "J-28", "J-30" to "J-36", "J-41" to "J-43".

Hence, petitioner must prove the actual payment of VAT on the imported goods by submitting its import entries or any other equivalent document. In the instant case, perusal of the records shows that there was no import entry or any other equivalent document submitted to present petitioner's claim. Hence, petitioner's claimed input VAT payment in the amount of P2,144,214.00 cannot be granted.

Anent the issue of whether or not the input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarters, the Quarterly VAT Returns for the 3rd quarter of 2002 showed that petitioner had taxable sales amounting to P1,447,683.80 with the related output tax liability of P144,768.38. After deducting such output tax from the substantiated input VAT of P6,735,530.00, the remaining amount of P6,590,761.62 represents petitioner's input VAT attributable to zero-rated sales. Consequently, only the input VAT of P6,549,041.04 can be attributed to petitioner's substantiated zero-rated sale of P903,303,591.24, computed as follows:

Substantiated Zero-rated Sales	P 903,303,591.24
Divided by Total Reported Zero-Rated Sales	÷ 909,058,074.90
Multiplied by Substantiated Excess Input VAT	x 6,590,761.62
Input VAT attributable to Substantiated Zero-Rated Sales	**P 6,549,041.04**

In sum, petitioner was able to prove that the input VAT of P6,549,041.04 was not applied against any output VAT in the succeeding quarters as seen in its Quarterly VAT Returns[37] from 4th quarter of 2002 to 2nd quarter of 2004.

Finally, anent the issue as to whether or not petitioner's claim for refund was timely filed within the two-year prescriptive period, this Court rules in the affirmative.

The reckoning of the two-year prescriptive period for the filing of claim for VAT refund starts from the date of filing of the corresponding quarterly VAT return.

[37] Exhibits "L-4" to "L-10".

The period covered by the claim is the 3rd quarter of 2002. Petitioner filed its VAT return on October 24, 2002[38]. Counting from this date, petitioner had until October 24, 2004 within which to file its claim administratively and judicially. However, October 24, 2004 falls on a Sunday.

Under the 1997 Rules of Procedure, if the last day of the period, as thus computed falls on a Saturday, or a legal holiday in the place where the Court sits, the time shall not run until the next working day.[39] From the afore cited law, petitioner had until October 25, 2004 within which to file its administrative and judicial claims.

In the instant case, the original administrative claim filed on March 25, 2004[40] and the Petition for Review filed on September 30, 2004.

Both administrative and judicial claims fall within the two-year prescriptive period.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** petitioner in the reduced amount of **SIX MILLION FIVE HUNDRED FORTY-NINE THOUSAND FORTY ONE AND 04/100 PESOS (P6,549,041.04)**, representing petitioner's excess input Value Added Tax on importations and domestic purchases that is attributable to zero-rated sales for the 3rd quarter of 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[38] Exhibit "A".
[39] Sec. 1, Rule 22 of the Revised Rules of Court.
[40] Annex D, Petition for Review.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division