



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE,      G.R. No. 218057

*Petitioner,*

Present:

LEONEN, J.,  
*Chairperson,*

HERNANDO,  
INTING,  
DELOS SANTOS, and  
ROSARIO, \*JJ.

- versus -

PHILEX MINING CORPORATION,  
*Respondent.*

Promulgated:  
January 18, 2021

*Mis & DC Batt*

X ----- X

DECISION

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> assails the January 7, 2015 Decision<sup>2</sup> and the May 11, 2015 Resolution<sup>3</sup> of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 1116, which affirmed the November 12, 2013 Decision<sup>4</sup> of the CTA Second Division in CTA Case No. 8424.

\* On official leave.

<sup>1</sup> *Rollo*, pp. 15-32.

<sup>2</sup> *Id.* at 33-45; penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Anelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban.

<sup>3</sup> *Id.* at 6-7.

<sup>4</sup> *Id.* at 51-70; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justices Juanito C. Castañeda and Caesar A. Casanova.

The CTA Second Division ordered the Commissioner of Internal Revenue (CIR) to refund in favor of Philex Mining Corporation (Philex) the amount of ₱18,610,568.32, representing its unutilized and excess input Value-Added Tax (VAT) attributable to its zero-rated sales for the fourth quarter of 2009.

### The Antecedents:

Philex is a domestic corporation engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. On January 21, 2010, Philex filed its original Quarterly VAT Return for the fourth quarter of 2009.<sup>5</sup> Subsequently, on September 13, 2011, it filed an amended Quarterly VAT Return<sup>6</sup> for its total zero-rated sales of ₱2,680,497,020.60, importation of goods of ₱93,018,475.00 with input tax of ₱11,162,217.00, and purchases of services of ₱132,944,084.17 with input tax of ₱15,953,290.10.<sup>7</sup>

Pursuant to Section 4.112-1 of Revenue Regulations (RR) No. 16-2005,<sup>8</sup> Philex filed its claim for refund/tax credit with the One Stop Shop

<sup>5</sup> Records, p. 11, 57.

<sup>6</sup> Id. at 16.

<sup>7</sup> Id. at 57.

<sup>8</sup> The relevant provisions of Section 4.112-1 of RR No. 16-2005 state:

SEC. 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –

(a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services

A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.

In case of zero-rated sales under Secs. 106(A)(2)(a)(1) and (2), and Sec. 106 (A)(2)(b) and Sec. 108 (B)(1) and (2) of the Tax Code, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the BSP [Bangko Sentral ng Pilipinas] rules and regulations.

Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, 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, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate.

x x x

(b) x x x

(c) Where to file the claim for refund/tax credit certificate

Claims for refunds/tax credit certificate shall be filed with the appropriate BIR office (Large Taxpayers Service (LTS) or Revenue District Office (RDO)) having jurisdiction over the principal place of business of the taxpayer; *Provided*, however, that direct exporters may also file their claim for tax credit certificate with the One Stop Shop Center of the Department of Finance; *Provided*, finally, that the filing of the claim with one office shall preclude the filing of the same claim with another office.

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

(OSS) Center of the Department of Finance per Claim Information Sheet No. 49813 in the amount of ₱27,115,507.10 on September 28, 2011.<sup>9</sup>

The CIR failed to act on Philex's administrative claim for refund which prompted Philex to file a Petition for Review with the CTA on January 27, 2012<sup>10</sup> docketed as CTA Case No. 8424.

Trial ensued and the case was submitted for decision after submission of Philex's Memorandum<sup>11</sup> dated June 28, 2013 and the CIR's Memorandum<sup>12</sup> dated July 26, 2013.

### **Ruling of the CTA Second Division.**

In its Decision<sup>13</sup> dated November 12, 2013, the CTA Second Division partially granted Philex's Petition for Review, to wit:

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to REFUND in favor of petitioner the amount of ₱18,610,568.32, representing its unutilized and excess input VAT attributable to its zero-rated sales for the fourth quarter of 2009.

SO ORDERED.<sup>14</sup>

Subsequently, the CTA Second Division denied the CIR's Motion for Partial Reconsideration<sup>15</sup> in a Resolution<sup>16</sup> dated January 7, 2014.

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In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commission of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.

(e) x x x

<sup>9</sup> Records, p. 57.

<sup>10</sup> Id. at 6-10.

<sup>11</sup> Id. at 249-263.

<sup>12</sup> Id. at 266-272.

<sup>13</sup> *Rollo*, pp. 51-70.

<sup>14</sup> Id. at 69-70.

<sup>15</sup> CTA *En Banc records*, pp. 34-43.

<sup>16</sup> Id. at 45-48.

### **Ruling of the CTA *En Banc*.**

Aggrieved, the CIR elevated the case to the CTA *En Banc*. However, in its January 7, 2015 Decision,<sup>17</sup> the CTA *En Banc* denied the CIR's Petition for Review, as follows:

WHEREFORE, premises considered, the Petition for Review is hereby DENIED for lack of merit.

SO ORDERED.<sup>18</sup>

The CTA *En Banc*, in a Resolution<sup>19</sup> dated May 11, 2015, denied the CIR's Motion for Reconsideration, finding that the contentions presented were mere reiterations or amplifications of the arguments raised by the CIR in its February 7, 2014 Petition for Review, all of which were duly considered and passed upon in the assailed Decision. Thus, the CTA *En Banc* found no justifiable reason to modify its January 7, 2015 Decision.

Hence, this Petition for Review on *Certiorari*<sup>20</sup> before this Court.

### **Issue**

Whether or not the CTA *En Banc* erred in affirming the CTA Second Division's Decision dated November 12, 2013 which ruled that Philex is entitled to a tax refund in the amount of ₱18,610,568.32, representing its unutilized and excess input VAT attributable to its zero-rated sales for the fourth quarter of 2009.

### **Our Ruling**

We deny the Petition. The CTA *En Banc* correctly affirmed the CTA Second Division's ruling that Philex is entitled to a refund of ₱18,610,568.32 representing its unutilized and excess input VAT attributable to its zero-rated sales for the fourth quarter of 2009.

Notably, the CTA *En Banc* enumerated four grounds in support of its ruling, to wit:

- (1) Philex's appeal before the CTA Second Division was seasonably filed;

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<sup>17</sup> *Rollo*, pp. 33-45.

<sup>18</sup> *Id.* at 44.

<sup>19</sup> *Id.* at 6-7.

<sup>20</sup> *Id.* at 15-32.

- (2) Philex is entitled to a refund as correctly ruled by the CTA Second Division;
- (3) The CTA Second Division did not err in considering the amount of zero-rated sales of Philex which were likewise supported by financial invoices dated outside the period of claim as the provisional invoices and bills of lading proved that sales were actually generated during the period of claim; and
- (4) Presentation before the CTA Second Division of the subsidiary sales journal and subsidiary purchase journal is not required for refund of input tax attributable to zero-rated sales.

**Timeliness of the claim for refund and the completeness of documents.**

Section 112(c) of the National Internal Revenue Code (NIRC) provides:

*SEC. 112. Refunds or Tax Credits of Input Tax. –*

x x x x

*(C) Period within which refund or tax credit of input taxes shall be made.*

– In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.

x x x x

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis supplied)

The foregoing provision is clear. The running of the 120-day period for the CIR to decide the claim for refund commences from the time of the submission of **complete documents** in support of the tax refund application.

The term “complete documents” is further clarified in Revenue Memorandum Circular (RMC) No. 49-2003. *Pilipinas Total Gas, Inc. v.*

*Commissioner of Internal Revenue (Pilipinas Total Gas, Inc.)*<sup>21</sup> explained the term “complete documents” in accordance with RMC No. 49-2003, viz.:

[F]or purposes of determining when the supporting documents have been completed – **it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.** After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30<sup>th</sup> day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

x x x x

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**<sup>22</sup> (Emphasis supplied)

Records show that Philex filed its application for tax refund, attaching therewith the necessary documents, on September 28, 2011. Pursuant to our pronouncement in *Pilipinas Total Gas, Inc.*, it is Philex that determines the completeness of the documents submitted for purposes of counting the 120-day period.

Within the period of 120 days from September 28, 2011, the CIR could have notified Philex, by way of a request, to submit additional documents which he/she deems necessary. Considering that no notice was given by the CIR or no other action was taken within the said 120 days, Philex had 30 days from January 26, 2012, the expiration of the 120-day period, or until February 26, 2012, to appeal to the CTA. Again, records show that Philex properly and timely filed its judicial claim on February 3, 2012. There is thus no merit in the CIR’s contention that Philex’s judicial claim was premature or that its supporting documents were incomplete.

**As to the substantiation of the claim for refund.**

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<sup>21</sup> 774 Phil. 473 (2015).

<sup>22</sup> Id. at 493-494.

The second and third grounds in support of the CTA *En Banc*'s Decision all relate to Philex's substantiation of its claim for refund. At this point, we hold that there is no need for the Court to go over and review once again the documents presented by Philex which were already passed upon by the CTA. It is settled that this Court is not a trier of facts. Moreover, factual questions should not be entertained in petitions for review filed under Rule 45 of the Rules of Court. Besides, there is no cogent reason to depart from the CTA *En Banc*'s finding that Philex's zero-rated sales, which were supported by financial invoices dated outside the period of claim, were actually generated during the period of claim in view of the provisional invoices and bills of lading during the latter period.

In *Commissioner of Internal Revenue v. Philex Mining Corporation*<sup>23</sup> which had similar factual antecedents and raised the same issues as the case at bench, We held that the CIR's other assertions that "Philex failed to prove that its input taxes are attributable to zero-rated sales; that its buyer received the goods sold; and that the sales invoices presented are within the period covered in the refund claim" are allegations that relate to the substantiation of the claim for refund. We further ruled:

We observe that these allegations necessarily involve factual issues and, thus, are evidentiary in nature which cannot be entertained in the present petition; it is well-settled that in a petition for review under Rule 45, only pure questions of law may be resolved. The Court, not being a trier of facts, is not duty bound to look into the documents submitted during trial in order to test the truthfulness of their contents. Therefore, the factual findings of the trial court are generally not disturbed on appeal unless it is perceived to have overlooked, misunderstood or misinterpreted certain facts or circumstances of weight, which, is properly considered, would affect the result of the case and warrant a reversal of the decision involved. Here, we find no cogent reason to depart from this general principle.<sup>24</sup>

Here, the CTA Second Division commissioned an Independent Certified Public Accountant (ICPA) who found, after examining Philex's voluminous documents, that its claim for refund was well-founded. The CTA *En Banc* likewise saw no reason to deviate from the findings of the ICPA and the CTA Second Division in partially granting Philex's refund "as the same is supported by pieces of evidence, which prove [Philex's] compliance with the requirements for refund of its claimed input tax attributable to zero-rated sales for the fourth quarter of taxable year 2009."<sup>25</sup>

**As to the non-submission of subsidiary sales and subsidiary purchase journals.**

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<sup>23</sup> G.R. No. 233942, February 21, 2018.

<sup>24</sup> *Id.*

<sup>25</sup> *Rollo*, p. 39.

Finally, the Court agrees with the tax tribunal that the submission of the subsidiary sales journal and subsidiary purchase journal is not indispensable to support Philex's claim for refund. Section 112(A) of the NIRC, which enumerates the requisites for a taxpayer to be entitled to a tax refund or credit, does not require subsidiary journals as part of the substantiation requirements, to wit:

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 of 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. Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

The CTA *En Banc* thus correctly held that “there is nothing in the aforementioned provision of the NIRC of 1997 which require[s] the presentation of the subsidiary sales journal and subsidiary purchase journal in order [for] a taxpayer [to] be entitled to refund, or issuance of a tax credit certificate, of its claimed input tax attributable to zero-rated sales.”<sup>26</sup> The subsidiary journals are not required, but they may be utilized by the CIR as vital sources of information for other purposes such as making assessments.<sup>27</sup>

Considering the foregoing, we find no reversible error in the assailed Decision of the CTA *En Banc*; the denial of the Petition of the CIR is thus warranted.

**WHEREFORE**, the Petition for Review is **DENIED** for lack of merit. The January 7, 2015 Decision and the May 11, 2015 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Case No. 1116, which affirmed the November 12, 2013 Decision of the CTA Second Division in CTA Case No. 8424, are **AFFIRMED**.

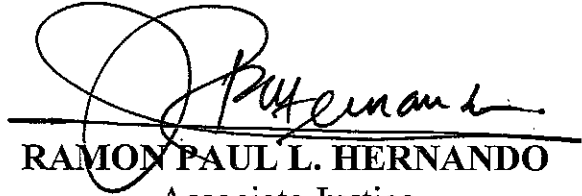
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<sup>26</sup> Id. at 43.

<sup>27</sup> *Commissioner of Internal Revenue v. Philex Mining Corporation*, G.R. No. 233942, February 21, 2018.




**SO ORDERED.**




**RAMON PAUL L. HERNANDO**  
Associate Justice

**WE CONCUR:**



**MARVIC M. V. F. LEONEN**  
Associate Justice  
Chairperson



**HENRI JEAN PAUL B. INTING**  
Associate Justice




**EDGARDO L. DELOS SANTOS**  
Associate Justice

On official leave  
**RICARDO R. ROSARIO**  
Associate Justice

**ATTESTATION**


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M. V. F. LEONEN**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice