

THIRD DIVISION

[G.R. No. 218057, January 18, 2021]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PHILEX MINING CORPORATION, RESPONDENT.

DECISION

HERNANDO, J.:

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

The CTA Second Division ordered the Commissioner of Internal Revenue (CIR) to refund in favor of Philex Mining Corporation (Philex) the amount of P18,610,568.32, 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.^[5] Subsequently, on September 13, 2011, it filed an amended Quarterly VAT Return^[6] for its total zero-rated sales of P2,680,497,020.60, importation of goods of P93,018,475.00 with input tax of P11,162,217.00, and purchases of services of P132,944,084.17 with input tax of P15,953,290.10.^[7]

Pursuant to Section 4.112-1 of Revenue Regulations (RR) No. 16-2005,^[8] Philex filed its claim for refund/tax credit with the One Stop Shop (OSS) Center of the Department of Finance per Claim Information Sheet No. 49813 in the amount of P27,115,507.10 on September 28, 2011.^[9]

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^[10] docketed as CTA Case No. 8424.

Trial ensued and the case was submitted for decision after submission of Philex's Memorandum^[11] dated June 28, 2013 and the CIR's Memorandum^[12] dated July 26, 2013.

Ruling of

**the CTA
Second
Division.**

In its Decision^[13] 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 P18,610,568.32, representing its unutilized and excess input VAT attributable to its zero-rated sales for the fourth quarter of 2009.

SO ORDERED.^[14]

Subsequently, the CTA Second Division denied the CIR's Motion for Partial Reconsideration^[15] in a Resolution^[16] dated January 7, 2014.

Ruling of the CTA *En Banc*.

Aggrieved, the CIR elevated the case to the CTA *En Banc*. However, in its January 7, 2015 Decision,^[17] 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.^[18]

The CTA *En Banc*, in a Resolution^[19] 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*^[20] 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 P18,610,568.32, 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 P18,610,568.32 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;
- (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.)^[21] 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 30th 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.**^[22] (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.**

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