

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

C.T.A. EB NO. 493
(C.T.A. CASE NO. 7391)

Present:

-versus-

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

PHILEX MINING CORPORATION,
Respondent.

Promulgated:

MAY 12 2010

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter “petitioner”) under *Section 3(b) Rule 8 of the Revised Rules of the Court of Tax Appeals*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to set aside the Amended Decision dated March 24, 2009 and Resolution dated May 12,

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2009 rendered by the Special First Division of this Court in C.T.A. Case No. 7391, the respective dispositive portions of which read, as follows:

“WHEREFORE, in view of the foregoing, petitioner’s claim for refund of its unutilized input VAT for the 4th quarter of taxable year 2003 is **PARTIALLY GRANTED**. Respondent is hereby ordered **TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **P3,382,740.00**.

SO ORDERED.”

“WHEREFORE, respondent’s **“Motion for Reconsideration”** is hereby **DENIED** for **LACK OF MERIT**.
SO ORDERED.”

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue, who is empowered to perform the duties of his office, including among others, the duty to act on and approve claims for refund or tax credit as provided by law, with office at the 5th Floor, Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent is a corporation organized and existing under the laws of the Philippines with office address at 27 Brixton St., Pasig City. It is engaged in the mining business, including



the exploration of mine minerals and the commercial production and marketing of mine products and is a VAT-registered taxpayer.

THE FACTS

The facts, as culled from the records, are as follows:

In the conduct of its business, respondent Philex entered into contracts with three buyers, to wit:

- 1) Johnson Matthey Public Limited Company (“Johnson Matthey”);
- 2) Nippon Mining and Metals Co., Ltd. (“Nippon Mining”);
and
- 3) Philippine Associated Smelting and Refining Corporation (“PASAR”).

On January 29, 2001, respondent Philex entered into Contract No. 7002 with Johnson Matthey of England covering the delivery by respondent Philex of gold for refining at Johnson’s refinery at Royston, England. Under the contract, Johnson Matthey, after it has assayed, refined and correct the value of the gold, has the option to buy the refined gold from respondent Philex. For the 4th quarter of 2003, respondent



Philex made one (1) shipment of gold bars to Johnson Matthey with a gross value of US\$33,296.00.

On March 22, 2002, respondent Philex entered into a contract with Nippon Mining and Metals Co., Ltd., of Tokyo, Japan, covering the sale of copper concentrates for the period April 1, 2002 to March 31, 2003. By virtue of an Assignment Contract dated July 1, 2002, Nippon Mining assigned all its rights and obligations pertaining to the aforementioned contract to Pan Pacific Copper Co. ("Pan Pacific") of Tokyo, Japan. Respondent Philex made one (1) shipment of copper concentrates to Pan Pacific during the 4th quarter with a gross value of US\$4,941,848.00.

On April 25, 2003, respondent Philex and PASAR entered into a letter agreement for PASAR's purchase and Philex's sale of copper concentrates for the period April 1, 2003 to March 2004. Respondent Philex made thirteen (13) shipments of copper concentrates to PASAR during the 4th quarter of 2003, with a gross value of US\$16,656,503.00.

On January 26, 2004, respondent Philex filed its VAT Return for the 4th quarter of 2003. On June 21, 2005, respondent Philex amended the return and reflected zero-rated sales of P1,209,176,550.97, domestic



purchases of goods of P669,496.10 with input tax of P66,949.61, and importation of goods of P75,277,080.00, with input tax of P7,527,708.00.

On May 9, 2005, respondent Philex filed before the Bureau of Internal Revenue its Application for Tax Credit/Refund of VAT for the period October to December 2003 in the amount of P7,594,657.61, representing excess input VAT for the 4th Quarter of 2003.

On June 22, 2005, respondent Philex also filed its claim for refund or tax credit with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (“OSSC”) of the Department of Finance, per Application No. 48830 15 in the amount of P7,594,657.61.

On December 28, 2005, for failure of petitioner CIR to act on the claim for refund, respondent Philex filed a Petition for Review with this Court, docketed as C.T.A. Case No. 7391.

In his Answer, petitioner CIR averred by way of special and affirmative defenses that this Court has no jurisdiction to take cognizance of the petition on the ground of non exhaustion of administrative remedies; that respondent Philex miserably failed to comply with the administrative requirements necessary in the processing of its claim for refund or tax credit in the total amount of Php7,594,651.61, as alleged



excess or unutilized input VAT for the 4th quarter of 2003; and that the OSSC status report stated that the OSSC sent three (3) notices dated October 24, 2005, November 30, 2005 and December 27, 2005, thru registered mail informing respondent Philex of the additional requirement/documents needed to expedite the processing of its claim, which respondent Philex continued to ignore/failed to comply with said OSSC notices.

After trial on the merits, on May 21, 2008, the Special First Division rendered the assailed Decision denying the Petition for Review.

On June 3, 2008, respondent Philex filed a "Motion for Reconsideration/New Trial", which was granted by the Special First Division, and respondent Philex was allowed to present additional evidence.

Thereafter, on March 24, 2009, the Special First Division rendered an Amended Decision partly granting the refund in the reduced amount of P3,382,740.00.

On April 13, 2009, herein petitioner CIR filed a Motion for Reconsideration of the Amended Decision, which was denied by the Special First Division in a Resolution dated May 12, 2009.



On June 29, 2009, herein petitioner CIR filed the instant Petition for Review raising this sole issue:

ISSUE

WHETHER RESPONDENT IS ENTITLED TO THE CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P3,382,740.00 OF ITS UNUTILIZED INPUT VAT FOR THE 4th QUARTER OF TAXABLE YEAR 2003.

On July 13, 2009, without necessarily giving due course to the petition, we required respondent Philex to file its comment, not a motion to dismiss, within ten (10) days from notice.

On July 27, 2009, respondent Philex filed its “Manifestation/Comment”.

On August 3, 2009, petitioner CIR filed his “Reply (Re: Manifestation/Comment dated 24 July 2009)”.

In a Resolution dated September 4, 2009, the petition was deemed submitted for decision.

In its Manifestation, respondent Philex stated that the instant case has become moot and academic with the issuance of a Tax Credit Certificate with serial number 000598 dated March 24, 2009, by the Department of Finance through the Bureau of Customs, which covers



respondent Philex's claim for VAT refund for the 4th quarter of 2003 in C.T.A. Case No. 7391 and for the 1st quarter of 2004 in C.T.A. Case No. 7426, in the aggregate amount of P12,091,086.33, and attached a photocopy of said TCC.

On January 7, 2010, We required respondent Philex to submit a certified true copy of said TCC. On January 25, 2010, respondent Philex filed its "Compliance".

However, a perusal of the document submitted by respondent Philex shows that the same was not certified by the Bureau of Customs which purportedly issued the same, neither was it stamped nor sealed by the Bureau. Thus, on February 16, 2010, we ordered respondent Philex to submit a copy of the TCC, duly certified by the proper authority, within ten (10) days from notice.

On March 12, 2010, respondent Philex filed its "Compliance" attaching thereto a certified true copy of the TCC attached, with a Certification of Alfredo A. Palma, Chief Accountant, Accounting Division, Financial Management Office of the Bureau of Customs.

Hence, this decision.



THE COURT *EN BANC*'S RULING

The present petition has now been rendered moot and academic.

Petitioner CIR contends that respondent Philex's Petition for Review with the Special First Division was filed beyond the prescriptive period and that respondent Philex's claim for refund should have been based on the NIRC of 1997 and not on the filing with the OSSC. In his Reply, petitioner CIR maintains that respondent Philex should not have filed an administrative claim for refund with the One Stop Shop Duty Drawback Center after it has previously filed a claim for refund with the BIR as it is akin to forum shopping.

Respondent Philex, on the other hand, contends that petitioner CIR's present petition has been rendered moot and academic as the Department of Finance, through the Bureau of Customs, has already issued to it a TCC, which covers the claim for VAT refund for the 4th quarter of 2003, the subject of its claim in C.T.A. Case No. 7391.

At the outset, after a careful examination of the arguments raised in the instant petition, we find that the issues raised by petitioner CIR are mere rehash of his "Motion for Reconsideration" filed in C.T.A. Case No. 7391 and present no new arguments nor new matters which have not been



considered and passed upon by the Special First Division in the assailed Amended Decision dated March 24, 2009 and Resolution dated May 12, 2009. However, due to the development of this case with the issuance of a TCC by the Bureau of Customs in favor of respondent Philex, simultaneous with the promulgation of the Amended Decision in C.T.A. Case No. 7391 on March 24, 2009, We are constrained to rule in favor of respondent Philex.

Records show that on March 24, 2009, the Special First Division rendered its Decision in C.T.A. Case No. 7391, partially granting respondent Philex's Petition for Review, in the terms aforesaid stated:

On March 24, 2009, the Department of Finance through the Bureau of Customs issued TCC No. 000598 in the amount of P12,091,086.33, covering respondent Philex's claim for VAT referred for the fourth quarter of 2003 in C.T.A. Case No. 7391 and for the first quarter of 2003 in C.T.A. Case No. 7426. Respondent Philex admitted that the subject TCC issued by the Bureau of Customs amounts to a fulfillment of the Amended Decision dated March 24, 2009. On the other hand, on the part of the government, when the Bureau of Customs issued the subject TCC, it was in effect acknowledging that the grantee-taxpayer named therein is



legally entitled to a tax credit, hence, it has the effect of abandoning its right to question the Amended Decision of the Special First Division, with respect to the amount granted in the subject TCC in this present appeal.

Further, it bears stressing that petitioner CIR did not question the authenticity and due execution of the subject TCC before us. If in any case, petitioner CIR is doubtful of the subject TCC, he should raise that as a defense and prove that it was erroneously issued and consequently prays for the cancellation thereof. However, considering that there has yet any issue raised against the subject TCC and considering further that respondent Philex has proven to this Court the authenticity of the same by submitting a certified true copy of the said TCC (Annex "A"), with a Certification from the representative of the Bureau of Customs, we have no recourse but to recognize the subject TCC as a satisfaction of respondent Philex's claim for refund in connection with the present case.

Petitioner CIR's contention that respondent Philex should not have filed a claim for refund with the OSSC after it has filed a claim for refund with the BIR, which act is tantamount to forum shopping, is now rendered moot and academic with the issuance of the subject TCC. A



TCC, being an undertaking by the government through the BIR or DOF acknowledging that a taxpayer is entitled to a certain amount of tax credit, as held by the Supreme Court in the case of *Pilipinas Shell Petroleum Corporation vs. CIR* (541 SCRA 316), as follows:

“A tax credit is not specifically defined in our Tax Code, but Art. 21 of EO 226 defines a tax credit as ‘any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board (of Investments), if so delegated by the Secretary of Finance.’ Tax credits were granted under EO 226 as incentives to encourage investments in certain businesses. A tax credit generally refers to an amount that may be ‘subtracted directly from one’s total tax liability.’ It is therefore an ‘allowance against the tax itself’ or ‘a deduction from what is owed’ by a taxpayer to the government. In RR 5-2000, a tax credit is defined as ‘the amount due to a taxpayer resulting from an overpayment of a tax liability or erroneous payment of a tax due.’

A TCC is

a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations,



if any, as may be prescribed by the provisions of these Regulations.

From the above definitions, it is clear that a TCC is an undertaking by the government through the BIR or DOF, acknowledging that a taxpayer is entitled to a certain amount of tax credit from either an overpayment of income taxes, a direct benefit granted by law or other sources and instances granted by law such as on specific unused input taxes and excise taxes on certain goods. Therefore, the TCCs are immediately valid and effective after their issuance.”

Moreover, what is frowned upon is double grant of the same claim for refund, which is not so in the present case as the BIR did not grant its administrative claim for refund. In view of the foregoing, we have no recourse, but to consider the issuance by the BOC of the subject TCC in favor of respondent Philex, which the latter has unqualifiedly accepted, as full satisfaction of the judgment in C.T.A. Case No. 7391.

Accordingly, we find no need to discuss the other issues raised by petitioner CIR in the instant Petition for Review, for being moot and academic.

WHEREFORE, in view of the full satisfaction of the Amended Decision dated March 24, 2009 in C.T.A. Case No. 7391 with the issuance by the Bureau of Customs of TCC No. 000598 covering the period of claim in favor of respondent Philex subject of the present

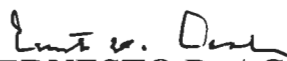


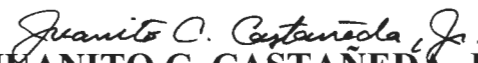
petition, the instant Petition For Review is hereby **DENIED**, and accordingly **DISMISSED** for being moot and academic.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

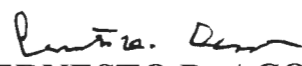

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been 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.


ERNESTO D. ACOSTA
Presiding Justice