

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

OCEANAGOLD
(PHILIPPINES), INC.,
Petitioner,

CTA EB NO. 2889
(CTA Case No. 9736)

Present:

- versus -

RINGPIS-LIBAN, *P.J.*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, *and*
CENTENO-DIJAMCO, *JL.*

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 25 2026

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is petitioner OceanaGold (Philippines), Inc.'s (**petitioner's/ OceanaGold's**) "Motion for Reconsideration (of the Decision dated January 7, 2026)"¹ (**MR**), personally filed on 02 February 2026 and emailed on 03 February 2026, with respondent Commissioner of Internal Revenue's (**respondent's/CIR's**) "Comment/Opposition (Re: Petitioner's [MR])"² (**Comment**), personally filed on 20 February 2026 and emailed on 23 February 2026.

¹ *Rollo*, pp. 225-245.

² *Id.*, pp. 247-259.

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Petitioner oppugns the Court *En Banc*'s Decision³ promulgated on 07 January 2026 (**assailed Decision**), the dispositive portion of which states:

...

ACCORDINGLY, in view of the foregoing, the instant Petition for Review filed by petitioner OceanaGold (Philippines), Inc. on 03 April 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

...

On 16 January 2026, petitioner received a copy of the assailed Decision. On 02 February 2026, petitioner filed its MR, assigning the following errors: *first*, that the Court *En Banc* erred in ruling that the *date of commencement of commercial production* must be determined by **whichever is earlier** between the contractor's own declaration and the feasibility study, as provided under Department of Environment and Natural Resources (DENR) Administrative Order No. 96-40⁴ (**DAO No. 96-40**); *second*, that the Financial or Technical Assistance Agreement (FTAA)⁵ executed between petitioner and the Government on 20 June 1994 — being a pre-existing contract — is shielded by the non-impairment clause of the 1987 Constitution; and *third*, that assuming *arguendo* that DAO No. 96-40 applies, production of sufficient quantity of minerals must first be demonstrated before either reckoning point may be consulted, and that such condition was met only on 26 February 2013, making 01 April 2013 the proper *date of commencement of commercial production*.

On 20 February 2026, respondent filed his or her Comment to the MR, countering that the Court *En Banc* correctly applied DAO No. 96-40 in determining the reckoning point for the recovery period, that administrative issuances carry the force and effect of law, and that petitioner's failure to present the Work Program and the DENR-approved feasibility study — documents which were exclusively within petitioner's possession and control — cannot now be cured at the MR stage.



³ Id., pp. 184-216; Emphasis in the original text.

⁴ Revised Implementing Rules and Regulations of Republic Act No. 7942, otherwise known as the "Philippine Mining Act of 1995."

⁵ Exhibit "P-2", Division Docket, Volume IV, pp. 1356-1409.

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We resolve.

Petitioner's MR lacks merit.

At the outset, We observe that the three (3) grounds assigned by petitioner are recycled arguments which the assailed Decision already addressed at length and with deliberation.⁶

In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*,⁷ the Supreme Court declared:

...

The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.

...

Nonetheless, to dispel petitioner's concerns, We find it fitting to further elucidate the bases for Our conclusion that for calendar year (CY) 2013, petitioner failed to adduce clear and convincing evidence — sufficient to overcome the presumption of correctness of the assessment — that it remained within the FTAA recovery period and thus was exempt from excise taxes on mineral products.



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Supra at note 3, pp. 205-215.

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G.R. No. 109645, 04 March 1996.

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We proceed to address each ground in *seriatim*.

- I. FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT'S (FTAA'S) CONTRACTUAL DEFINITION DOES NOT DISPLACE THE GOVERNING PROVISIONS OF DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) ADMINISTRATIVE ORDER NO. 96-40.

Petitioner urges that Section 2.14 of the FTAA,⁸ which defines *date of commencement of commercial production* as “the first day of the calendar quarter following the quarter in which production equals fifteen percent (15%) of the project's initial annual design capacity,” must govern to the exclusion of the *whichever comes first* prescribed by DAO No. 96-40. The argument proceeds from the transitory provisions of Section 112⁹ of Republic Act No. (RA) No. 7942,¹⁰ otherwise known as the “Philippine Mining Act of 1995,” and Section 272¹¹ of DAO No. 96-40, which petitioner reads as shielding pre-existing FTAA's from any subsequent provision that may be inconsistent with their terms.

We are not persuaded.

Section 112 of RA 7942 invoked by petitioner provides, in unambiguous language, that pre-existing FTAA's “shall comply with the applicable provisions of [RA 7942] and its implementing rules and regulations.” Petitioner seizes on the word *applicable* to argue that **only** those provisions of DAO No. 96-40 that are **consistent** with the FTAA may be enforced against it. But this is to read the transitory clause backwards. *Applicable* refers to the provisions that govern **compliance**; it does not carve out a general exemption from statutory and regulatory oversight wherever the FTAA happens to define a term differently. If petitioner were correct, no contractor holding a pre-existing FTAA could ever be made to comply with any provision of RA 7942 that

⁸ Supra at note 5.

⁹ SECTION 112. Non-impairment of Existing Mining/Quarrying Rights.

¹⁰ AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION.

¹¹ SEC. 272. Non-Impairment of Existing Mining/Quarrying Rights.

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departs, in any particular, from the text of its FTAA — a result so broad as to frustrate the very purpose of RA 7942.

The sounder and more faithful construction is this — an FTAA contractor holding pre-existing rights retains those rights intact; it is not stripped of what the FTAA grants. But **where RA 7942 and DAO No. 96-40 lay down regulatory requirements, e.g., with respect to the determination of the recovery period and the reckoning of commercial production, those requirements are *applicable to all FTAA contractors*, pre-existing or otherwise, because they bear on the State's constitutional prerogative over the exploration, development and utilization of natural resources under Section 2,¹² Article XII of the 1987 Constitution. That prerogative is inalienable and admits of no contractual diminution.**

Administrative issuances issued in the exercise of delegated legislative authority carry the force and effect of law.¹³ DAO No. 96-40 is such an issuance. Its definition of *commercial production* — which

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ARTICLE XII

National Economy and Patrimony

...

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis and underscoring supplied)

¹³

ABAKADA GURO Party List (formerly AASJS), et al. v. Hon. Cesar V. Purisima, et al., G.R. No. 166715, 14 August 2008.

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looks to the date of commercial operation as **declared** by the contractor or as **stated in the feasibility study**, whichever comes first — is a regulatory requirement. It draws its obligatory force not from the parties' agreement but from the State's sovereign authority to regulate the mining industry.

II. THE NON-IMPAIRMENT
CLAUSE DOES NOT INSULATE
PETITIONER FROM
REGULATORY SUPERVISION OF
THE RECOVERY PERIOD.

Petitioner invokes the non-impairment clause of Section 10,¹⁴ Article III of the 1987 Constitution, arguing that the application of DAO No. 96-40's definition of commercial production to the FTAA effectively alters the contractual reckoning point for the recovery period, thus impairing the obligation of the contract.

This does not hold water.

The non-impairment clause, as the Supreme Court has recognized, applies most forcefully to contractual tax exemptions -- those granted by the taxing authority acting in its private capacity, pursuant to enabling laws, where the government sheds its cloak of authority, waives its governmental immunity and enters into an agreement that becomes the source of the exemption.¹⁵ The clause protects the parties against subsequent legislative or administrative action that withdraws a right that was granted as part of the contractual inducement.¹⁶

The FTAA authorizes petitioner to extract and mill mineral resources that are, by constitutional definition, owned by the Filipino people. That authorization — the license to exploit national patrimony — is in the nature of a privilege. It is a privilege extended by the sovereign State in its governmental, not private, capacity. The

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ARTICLE III
Bill of Rights

...
SECTION 10. No law impairing the obligation of contracts shall be passed.

¹⁵ *Manila Electric Company v. Province of Laguna, et al.*, G.R. No. 131359, 05 May 1999.

¹⁶ *Id.*

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government did not shed its cloak of authority when it entered into the FTAA; it exercised that authority precisely to regulate the manner in which a finite and irreplaceable national resource would be exploited, and on what fiscal terms.

Apart from the foregoing and even assuming for the sake of argument that the non-impairment clause applies, the argument still fails. What petitioner seeks to protect here is not a contractual entitlement to a fixed recovery period, but a unilateral right to determine, **by its own declaration alone, when that period commences.** The FTAA does not grant petitioner the right to commence commercial production at the time and manner of its own choosing; it grants a recovery period running from a date that must be ascertained in accordance with the applicable legal framework. To apply DAO No. 96-40's *whichever comes first* is not to revoke the recovery period — it is to determine, in accordance with applicable law, **when that period begins.**

Verily, there is no impairment of a contract when the State, in the legitimate exercise of its police and regulatory power over the extractive industries, establishes the evidentiary framework for proving the commencement of commercial production. What is impaired must be a right that was given; here, no right to a particular calendar date was ever given. What was given was a recovery period of up to five (5) years from the *date of commencement of commercial production* and it is precisely the determination of that date which DAO No. 96-40, consistently with the FTAA's own terms, governs.

III. THE ARGUMENT THAT ACTUAL
PRODUCTION MUST PRECEDE
THE RECKONING OF THE
RECOVERY PERIOD DOES NOT
AVAIL PETITIONER.

Petitioner's third ground is that even under DAO No. 96-40,¹⁷ there can be no reckoning of the recovery period without first establishing that actual commercial production had taken place. Petitioner leans heavily on the Supreme Court's statement in *La Bugal-*

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Supra at note 4.

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*B'laan Tribal Association, Inc., et al. v. Victor O. Ramos, et al.*¹⁸ (**La Bugal-B'laan**) that there can be no recovery without commencing actual commercial production.

We remain unconvinced.

The passage from *La Bugal-B'laan* invoked by petitioner was made in the context of explaining the rationale for the recovery mechanism namely, that contractors recover their pre-operating expenses not by extracting cash from the economy, but by not paying a portion of the basic government share during the active production phase. The Supreme Court was not, in that passage, laying down a rule that the recovery period cannot be triggered unless a contractor proves, in hindsight, that it was then producing minerals in commercially sufficient quantities. The passage describes the mechanism of recovery. It does not establish **the conditions for the reckoning of the recovery period**.

More evidently, Section 5(i)¹⁹ of DAO No. 96-40 defines *Commercial Production* as the “production of sufficient quantity of minerals to sustain economic viability of mining operations reckoned from the date of commercial operation as declared by the Contractor or as stated in the feasibility study, whichever comes first.” The phrase ‘reckoned from’ anchors the definition to a reference date — a date that is legally determined, not empirically observed at the exact moment of production. Petitioner would read the definition as requiring a prior finding of actual production before the reckoning date may be identified; but the text establishes the opposite sequence: the reckoning date determines when commercial production, for purposes of the recovery period, is deemed to commence.

Additionally, the difficulty that petitioner now faces — the inability to establish a reckoning point under DAO No. 96-40 — is not

¹⁸ G.R. No. 127882 (Resolution), 01 December 2004; Citation omitted and emphasis supplied.

¹⁹ ...
Section 5. *Definitions of Terms*
...

i. “Commercial Production” refers to the production of sufficient quantity of minerals to sustain economic viability of mining operations reckoned from the date of commercial operation as declared by the Contractor or as stated in the feasibility study, whichever comes first. (Italics supplied)

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a defect in the law. It is a consequence of petitioner's own evidentiary choices. Petitioner came before Us having presented only its own declaration as the reckoning point for commercial production. It presented no DENR-approved feasibility study. It presented no Work Program — the very document that would have shown the feasibility study's stated date of commercial operation and allowed Us to apply the *whichever comes first* test. Even the ICPA was not given an opportunity to examine those documents.

The rule is settled — the willful suppression of evidence gives rise to the presumption that, if produced, it would have been adverse to the withholding party.²⁰ The documents that would have allowed petitioner to establish the second reckoning point and, more critically, which reckoning point came first, were within petitioner's exclusive possession and were not presented. That omission is fatal.

Tax assessments carry a presumption of correctness and good faith. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made.²¹ The burden of overcoming that presumption lies squarely upon the taxpayer.²² It is discharged, if at all, by presenting competent, credible and complete evidence.

Petitioner did not discharge that burden before the assailed Decision was rendered. It has not discharged it in the MR. Nothing in the MR — not the argument from the FTAA's primacy, not the invocation of the non-impairment clause, not the *arguendo* reading of DAO No. 96-40 — sufficiently establishes that CY 2013 fell within the recovery period. The assessment for deficiency excise tax in the aggregate amount of ₱262,386,478.78, inclusive of surcharge and interest, must therefore stand.

WHEREFORE, in view of the foregoing, petitioner OceanaGold (Philippines), Inc.'s "Motion for Reconsideration (of the Decision dated January 7, 2026)," personally filed on 02 February 2026 and emailed on 03 February 2026, is hereby **DENIED** for lack of merit. 

²⁰ Section 3(e), Rule 131 of the Rules on Evidence.

²¹ *Commissioner of Internal Revenue v. Spouses Remigio Magaan, et al.*, G.R. No. 232663, 03 May 2021.

²² *Id.*

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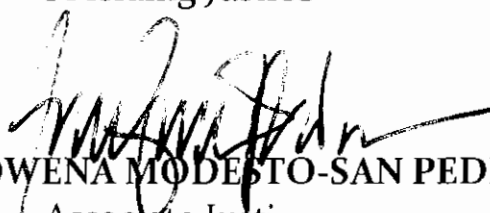
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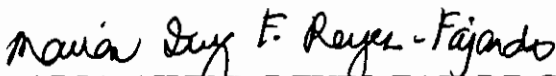
SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

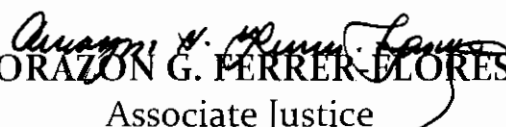
WE CONCUR:


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-ELORES
Associate Justice


HENRY S. ANGELES
Associate Justice

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PAOLO S. TESTON
Associate Justice



DEBBIE JEAN I. CENTENO-DIJAMCO
Associate Justice