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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5133

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 29 1997

x - x

DECISION

This petition for review is seeking for the refund of the amount of P23,224,040.80 allegedly representing excess input value-added tax (VAT) for taxable quarter August to October 1992.

Petitioner, Benguet Corporation, is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the mining business which includes the exploration, development and operation of mining properties for purposes of commercial production, and in marketing mine products produced by it.

Pursuant to Section 107 of the Tax Code, petitioner registered with the Bureau of Internal Revenue (BIR) as a value-added taxpayer with VAT Registration Certificate No. 31-9-000027 (Exh. A, Petitioner).

Petitioner alleges that 98% of its products are being exported and are subject to zero-rated VAT based on Section 100 of the Tax Code (TSN, June 22, 1995, p. 7). Thus, it obtained from the BIR an approval for its application for zero-rating with regard to its export sales of mine products pursuant to the aforementioned proviso. This was approved by the Deputy Commissioner of Internal Revenue, Mr. Victor A. Deoferio, Jr., on May 4, 1988. (Annex B).

For taxable quarter August to October 1992, petitioner filed with the BIR its VAT return reflecting, among others, its zero-rated sales and the excess input tax payment in the amount of P23,289,152.50, detailed as follows: (Exh. B, Petitioner)

Details Of Sales	Amount	VAT Output Tax
Taxed Goods/Services	P 5,823,396.75	P 582,333.53
Zero Rated Sales	363,105,480.80	none
Exempt Sales	-	none
Total Sales	P368,928,877.55	P 582,333.53

Details Of Purchases	Amount	VAT Output Tax
Carried Over From Previous Quarter	none	
Domestic Purchases Of Goods/Services	P184,011,685.80	P18,401,168.58
Importations Of Goods	54,703,174.50	5,470,317.45
Purchases Not Qualified For Input Tax Credits	-	
	Total Input Tax	P23,871,486.03
Excess VAT Credits		P23,289,152.50

On April 28, 1994, petitioner filed an Application for the Tax Credit/Refund of Value-Added Tax paid with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance pursuant to the BIR Revenue Audit Memorandum Order No. 2-93 (Exhs. C and D, Petitioner). However, out of the excess input taxes of P23,289,152.50, petitioner only sought a lesser amount of P23,224,040.80, allegedly representing input taxes attributable to its zero-rated export sales.

On July 26, 1994, petitioner filed the instant petition for review in order to preserve its right to judicially claim for the refund of excess VAT payments since respondent did not act on its request more than sixty (60) days as prescribed under Section 106(e) of the Tax Code.

On October 24, 1994, while the case was pending trial, Revenue Officers Julie Real, Conchita Cruz and Warlina Palomares were authorized by Ms. Juanita D. Amatong, Undersecretary, OIC Executive Director, of the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance to examine the books of accounts and other accounting records of herein petitioner for the verification and evaluation of the latter's claim for value-added tax credit. (Exh. 4, Respondent).

As a result, the revenue examiners found petitioner's claim for refund meritorious. In their report, it was recommended that a tax credit certificate be issued in the amount of P23,157,481.15 for the quarter August to October 1992, broken down as follows: (Exh. 1, Respondent)

Computation of VAT Credit:

	Domestic Purchases	Importations	Total
Amount of Claim (August to October 1992)	P17,753,723.35	P5,470,317.45	P23,224,040.80
Add: Output taxes applied	-	-	-
Total input taxes claimed	P17,753,723.35	P5,470,317.45	P23,224,040.80
Less: Disallowed input taxes	66,559.65	-	66,559.65
AMOUNT CREDITABLE	P17,687,163.70	P5,470,317.45	P23,157,481.15

Subsequently, on January 9, 1996, based on the above findings, the Bureau of Internal Revenue caused the issuance of the Tax Credit Certificate SN 006134 in the amount of P17,687,163.70, received by the petitioner on April 2, 1996, relative to the instant claim for refund of petitioner on its domestic purchases (Exh. 2, Respondent). However, with regard to the input taxes claimed on importation in the amount of P5,470,317.45, the same has been approved by the Bureau of Internal Revenue but the authority to issue a tax credit was vested upon the Commissioner of Customs pursuant to the agreement executed by and between the Bureau of Internal Revenue and the Bureau of Customs, dated April 8, 1988. (Exh. 6, Respondent).

On July 31, 1996, counsel for the respondent moved for the dismissal of the case on the ground that petitioner has no more cause of action against the respondent (Minutes of the session, July 31, 1996, CTA records, p. 140). The claim for refund pertaining to domestic purchases for the quarter August to October 1992 has already been granted to it and the claim for refund of input tax on importation has already been indorsed to the Bureau of Customs for the issuance of a tax credit certificate. On the other hand, petitioner filed its "Manifestation and Opposition to Motion to Dismiss" stating that the said tax credit certificate issued by the respondent only represents a portion of its entire claim for refund and that it does not intend to abandon its right to claim the remaining balance; and that it has not lost its cause of action.

Thus, the issues posed before Us are as follows:

1. Whether or not petitioner has a cause of action against respondent relative to the claim for refund of input taxes on importation in the amount of P5,470,317.45; and

2. Whether or not petitioner has proven by substantial evidence its entitlement thereto.

As regards the first issue, respondent moved for the dismissal of the instant case, on the ground that a tax credit certificate in the amount of P17,687,163.70 was already issued to petitioner and that the remaining sum of P5,470,317.45 has already been indorsed by the Bureau of Internal Revenue to the Bureau of Customs for the issuance of a tax credit certificate. Thus, petitioner has no more cause of action against respondent.

We disagree.

To shed light on this controversy, we are citing our previous ruling in a form of a resolution in the case entitled **Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5167,** November 15, 1996, which involved the same parties and issue at hand. Pertinent portions of which are quoted as follows:

> For consideration by this Court is respondent's "Motion to Dismiss Above-Entitled Petition," filed through express mail on August 29, 1996, and received by this Court on August 30, 1996. In her motion, respondent moves to dismiss instant petition on the ground that petitioner has no more cause of action against respondent. She alleged that there is nothing left for her to be done as she already granted to petitioner a tax credit in the amount of P14,959,235.78 as evidenced by Tax Credit Certificate No. SN 006135.
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> In its "Opposition To Motion To Dismiss" filed on September 18, 1996, petitioner argued that the subject matter of instant petition is its total claim for refund of excess input VAT credits in the amount of P18,855,121.79. As the amount of P14,959,235.78 has already been granted, there is the remaining balance of P3,895,886.01, which petitioner considers as a cause of action still existing against respondent. On the other hand, respondent maintains that since the amount of P3,895,886.01 represents VAT input taxes on importation, the refund or tax credit of the same should be acted upon by the Commissioner of Customs. This is pursuant to an internal arrangement/agreement between the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), whereby the latter agency is

given the authority to issue tax credit certificates when it comes to VAT paid on importations. Therefore, in view of this agreement, respondent contends that the balance of ₱3,895,886.01 is an existing cause of action, no longer against her, but against the Commissioner of Customs.

The Court begs to disagree. Under paragraphs (e) and (f) of Section 106 of the Tax Code, it is clearly provided that refunds of input taxes shall be made by the Commissioner of Internal Revenue. The Memorandum of Agreement between the BIR and BOC cited by counsel for respondent does not have the effect of amending Section 106 of the Tax Code because the fact remains that **it is still the Commissioner of Internal Revenue who has the authority to grant the refund of input value-added taxes** thus she maintains her status as an indispensable party to the instant petition. And being an indispensable party, the Commissioner of Internal Revenue must be included and must stay as a party respondent, otherwise, the action cannot proceed. Section 7, Rule 3 of the Revised Rules of Court provides that: (Underlining supplied)

> Section 7. *Compulsory joinder of indispensable parties.* - Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.
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> xxx xxx xxx.

It is clear from the above-cited ruling that respondent Commissioner of Internal Revenue is an indispensable party when it comes to refund of value-added tax pursuant to Section 106(e) and (f) of the Tax Code. Therefore, she cannot disclaim her duty under the law when it comes to refund of VAT input taxes. Thus, the cause of action against the respondent still subsists despite her partial granting of input taxes to petitioner.

It is to be stressed that the Commissioner of Internal Revenue has the full authority to grant refund of excess input taxes under the Tax Code. The memorandum agreement executed between the two bureaus does not have the effect of amending the law. The respondent cannot renounce the duty tasked upon her office. Therefore, we find the respondent's motion to dismiss untenable.

With respect to the second issue, the Court finds petitioner's claim for refund of input tax on importation in order. Although petitioner presented a certification of an independent CPA (Exh. E, Petitioner), the Court gave more weight to the report of investigation conducted by the revenue examiners on petitioner's accounting records, which resulted in the recommendation of granting the claim for refund based on a well-entrenched rule that:

> Findings of administrative or quasi-judicial agencies which have acquired expertise/special knowledge because their jurisdiction is confined to specific matters are accorded not only respect but also finality. **(Latchme Motoomull vs. Dela Paz, July 24, 1990, 187 SCRA 743; Villanueva vs. Court of Appeals, January 27, 1992, 205 SCRA 537; Sesbreno vs. Ala, May 5, 1992, 208 SCRA 359; and Villanueva, Sr. vs. Leogardo, Jr., 215 SCRA 835; all cited in Intel Philippines Manufacturing, Inc. vs. Commissioner of**

Internal Revenue, CTA Case No. 4987, December 9, 1996).

We, therefore, adopt the factual findings arrived at by the revenue examiners.

WHEREFORE, in view of the foregoing, the petition for review is found meritorious. Respondent is hereby ORDERED to ISSUE a tax credit certificate in favor of petitioner the remaining sum of ₱5,470,317.45, representing the excess input tax payments made on importation for the taxable quarter August to October 1992 or in the alternative, respondent is hereby ORDERED to **REITERATE** the authority granted to the Commissioner of Customs for the issuance of such tax credit certificate in the above-mentioned amount pursuant to the agreement executed between the Bureau of Internal Revenue and the Bureau of Customs, dated April 8, 1988.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals