REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10103

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OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10183

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUN 01 2023, 3:01 PM

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DECISION

MANAHAN, *J.:*

These consolidated *Petitions for Review* seek a refund or tax credit in the aggregate amount of ₱142,240,851.58, allegedly representing excise taxes erroneously, illegally and wrongfully collected by respondent, for the period from July to December 2017.

THE PARTIES

Petitioner Oceanagold (Philippines), Inc. (formerly, Australasian Philippines Mining, Inc.) is a corporation organized and existing under the laws of the Philippines, with principal place of business at the 2nd Floor, Carlos J. Valdes

Building, 108 Aguirre St., Legaspi Village, 1229 Makati City.[1] It is an assignee-contractor to the Financial or Technical Assistance Agreement (FTAA) dated June 20, 1994 entered into by the Republic of the Philippines and Arimco Mining Corporation.[2]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who is tasked to assess and collect all national internal revenue taxes, fees, and charges, and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City where he may be served with summons and other legal processes.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On February 4, 2019, petitioner filed a formal claim for refund or tax credit with the Excise LT Audit Division I of the BIR, seeking the recovery of excise taxes paid for the four (4) quarters of taxable year (TY) 2017, and the first quarter of TY 2018, on petitioner's removal of copper concentrates and doré bars in the aggregate amount of ₱455,409,873.97.[4]

Subsequently, on October 31, 2019, petitioner received the letter dated October 10, 2019 from the BIR,[5] denying its administrative claim for refund of excise tax in the amount of ₱455,409,873.97 paid for the period from February 6, 2017 to March 23, 2018.

PROCEEDINGS BEFORE THIS COURT

<u>For CTA Case No. 10103</u>:

Due to respondent's alleged inaction,[6] on July 4, 2019, petitioner filed a *Petition for Review*,[7] which was docketed as

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[1] Exhibit "P-6", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, p. 990 to 998.
[2] Refer to Exhibits "P-2", "P-3", "P-4", "P-4-a", "P-5", and "P-6", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 915 to 998.
[3] Par. 1, Stipulation of Facts, *Consolidated Joint Stipulation of Facts and Issues* (CJSFI), Docket (CTA Case Nos. 10103 & 10183) – Vol. II, p. 737.
[4] Par. 2, Stipulation of Facts, CJSFI, Docket (CTA Case Nos. 10103 & 10183) – Vol. II, p. 737; Exhibits "P-32", "P-32-a" and "P-32-b", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, p. 1086 to 1102.
[5] Exhibit "P-61", Docket (CTA Case Nos. 10103 & 10183) – Vol. III, pp. 1237 to 1239.
[6] Par. 4, *Petition for Review*, Docket (CTA Case No. 10103) – Vol. I, p. 11.
[7] Docket (CTA Case No. 10103) – Vol. I, pp. 10 to 60.

CTA Case No. 10103, praying, *inter alia*, that this Court render judgment ordering respondent to grant a refund or tax credit in the amount of ₱69,389,330.59, allegedly representing excise taxes erroneously paid by petitioner, and illegally and wrongfully collected by respondent for the period from July to September 2017. The case was raffled to this Court's First Division.

On August 16, 2019, respondent filed a *Motion for Leave to Admit Attached Answer*,[8] which was granted by the Court in its Resolution dated August 30, 2019,[9] thereby admitting the attached *Answer*. In the said *Answer*,[10] respondent interposed his special and affirmative defenses.

Thereafter, CTA Case No. 10103 was initially set for Pre-Trial Conference on October 17, 2019.[11]

On October 11, 2019, petitioner filed its *Omnibus Motion A. To Consolidate CTA Case Nos. 10103 and 10183; B. To Defer Pre-Trial Conference in CTA Case No. 10103*,[12] praying for the consolidation of the said cases, and to hold in abeyance further proceedings of CTA Case No. 10103 until the said *Omnibus Motion* is resolved.

Thereafter, on October 14, 2019, respondent filed his *Pre-Trial Brief*.[13]

For lack of a quorum, the Pre-Trial Conference previously set on October 17, 2019 was reset to November 28, 2019.[14]

On November 25, 2019, the *Pre-Trial Brief for Petitioner* was filed.[15]

In its Order dated November 27, 2019,[16] the Court granted petitioner's motion to defer *Pre-Trial Conference* in CTA Case No.

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[8] Docket (CTA Case No. 10103) – Vol. I, pp. 170 to 173.
[9] Docket (CTA Case No. 10103) – Vol. I, p. 199.
[10] Docket (CTA Case No. 10103) – Vol. I, pp. 175 to 196.
[11] Docket (CTA Case No. 10103) – Vol. I, pp. 200 to 201.
[12] Docket (CTA Case No. 10103) – Vol. I, pp. 204 to 206.
[13] Docket (CTA Case No. 10103) – Vol. I, pp. 210 to 212.
[14] *Notice of Resetting* dated October 22, 2019, Docket (CTA Case No. 10103) – Vol. I, p. 214.
[15] Docket (CTA Case No. 10103) – Vol. I, pp. 216 to 233.
[16] Docket (CTA Case No. 10103) – Vol. I, p. 236.

10103, and cancelled the *Pre-Trial Conference* set on November 28, 2019 until further orders from the Court.

For CTA Case No. 10183:

Due to respondent's alleged inaction,[17] on October 8, 2019, petitioner filed a *Petition for Review*,[18] which was docketed as CTA Case No. 10183, praying, *inter alia*, that this Court render judgment ordering respondent to grant a refund or tax credit in the amount of ₱72,851,520.99, allegedly representing excise taxes erroneously paid by petitioner, and illegally and wrongfully collected by respondent for the period from October to December 2017. The case was raffled to this Court's Third Division.

Subsequently, on October 18, 2019, petitioner filed a *Motion to Consolidate*,[19] wherein it prayed that an order be issued by the Court that: (1) the consolidation of CTA Case No. 10183 with CTA Case No. 10103 be granted; and (2) any further proceeding in the instant case be held in abeyance until the instant motion for consolidation is resolved.

Respondent then filed his *Answer* on November 4, 2019,[20] interposing the same special and affirmative defenses he raised in his Answer in CTA Case No. 10103.

For the consolidated cases:

In the Resolution dated November 28, 2019 issued by the Third Division of this Court,[21] and the Resolution dated February 10, 2020 issued by its First Division,[22] the Court granted petitioner's *Motion to Consolidate*, and CTA Case No. 10183 was consolidated with CTA Case No. 10103.

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[17] Par. 4, *Petition for Review*, Docket (CTA Case No. 10183) – Vol. I, p. 7.
[18] Docket (CTA Case No. 10183) – Vol. I, pp. 6 to 58.
[19] Docket (CTA Case No. 10183) – Vol. I, pp. 167 to 170.
[20] Docket (CTA Case No. 10183) – Vol. I, pp. 175 to 196.
[21] Docket (CTA Case No. 10183) – Vol. I, pp. 206 to 207; Docket (CTA Case No. 10103) – Vol. I, pp. 248 to 249.
[22] Docket (CTA Case No. 10183) – Vol. I, pp. 209 to 210; Docket (CTA Case No. 10103) – Vol. I, pp. 245 to 246.

The *Pre-Trial Conference* was scheduled on April 23, 2020.[23] However, the same was reset to, and held on, September 24, 2020.[24] Prior thereto, the *Consolidated Pre-Trial Brief for Petitioner* was filed on September 18, 2020,[25] while the *Respondent's Consolidated Pre-Trial Brief* was posted on September 21, 2020.[26]

On October 14, 2020, the parties submitted their *Consolidated Joint Stipulation of Facts and Issues*,[27] which the Court approved in the Resolution dated October 28, 2020,[28] thereby terminating the Pre-Trial. The Pre-Trial Order dated February 15, 2021 was then issued.[29]

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Atty. Joan D. Adaci-Cattiling,[30] petitioner's President and Head of Legal and Corporate Affairs; (2) Ms. Hesther Bahiwag,[31] petitioner's Accounting Superintendent; and, (3) Ms. Elaine E. de Guzman,[32] the Court-commissioned Independent Certified Public Accountant (ICPA).[33]

The Report of the ICPA was submitted on January 5, 2021, consisting of eight folders.[34]

Petitioner filed its *Formal Offer of Evidence* on March 1, 2021.[35] Respondent, however, failed to file his comment thereto.[36] In the Resolution dated September 29, 2021,[37] the

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[23] Resolution dated March 11, 2020, Docket (CTA Case No. 10103) – Vol. I, p. 254.
[24] *Notice of Resetting* dated June 30, 2020, Docket (CTA Case No. 10103) – Vol. I, p. 255; Order dated September 24, 2020, Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 724 to 726.
[25] Docket (CTA Case No. 10103) – Vol. I, pp. 257 to 274.
[26] Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 732 to 734.
[27] Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 737 to 748.
[28] Docket (CTA Case Nos. 10103 & 10183) – Vol. II, p. 764.
[29] Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 834 to 857.
[30] Exhibit "P-65", Docket (CTA Case No. 10103) – Vol. I, pp. 283 to 304; Order dated November 26, 2020, Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 806 to 807.
[31] Exhibit "P-66", Docket (CTA Case No. 10103) – Vol. I, pp. 510 to 518-A; Order dated February 9, 2020, Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 827 to 828.
[32] Exhibit "P-68", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 819 to 824; Order dated February 9, 2021, Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 827 to 828.
[33] Minutes of the hearing held on, and Order dated, November 26, 2020, Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 805 to 807.
[34] Exhibit "P-69".
[35] Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 858 to 903
[36] Records Verification dated March 18, 2021 issued by this Court's Judicial Records Division, Docket (CTA Case Nos. 10103 & 10183) – Vol. III, p. 1241.
[37] Docket (CTA Case Nos. 10103 & 10183) – Vol. III, pp. 1247 to 1251.

Court admitted petitioner's offered exhibits, *except* for the following:

a) Exhibits "P-29" and "P-54-a", for failure to present the original documents;

b) Exhibits "P-62" to "P-64", and "P-70", for they were not used as exhibit references;

c) Exhibit "P-67", for the exhibit marking is not found in the records;

d) Exhibits "P-53866", and "P-53867", for there is no such marked document in the case records;

e) Exhibits "P-79-A", "P-394", "P-1022", "P-2569" to "P-2576", "P-4186", "P-4259", "P-5210", "P-7557", "P-7558", "P-8617", "P-15853", "P-16067", "P-16068", "P-19365" to "P-19367", "P-19657" to "P-19659", "P-20569", "P-22079" to "P-22129", "P-22360", "P-23014", "P-23249" to "P-23251", "P-23695", "P-26746", "P-27240" to "P-27241", "P-27281" to "P-27283", "P-27308" to "P-27311", "P-27467" to "P-27471", "P-27609", "P-27613", "P-28327" to "P-28332", "P-29871" to "P-29881", "P-32610" to "P-32612", "P-33254", "P-33968" to "P-33970", "P-35391", "P-36322" to "P-36324", "P-36804" to "P-36805", "P-36858" to "P-38531", "P-40041", "P-42696", "P-45940", "P-48107" to "P-48109", "P-48120" to "P-48122", "P-48334", "P-49058", "P-50115" to "P-50117", "P-51601" to "P-51786", "P-51791" to "P-52235", "P-52238" to "P-52774", "P-52776" to "P-52781", "P-52783" to "P-52893", "P-52895" to "P-53349", for not being found in case records; and

f) Exhibits "P-22076" to "P-22078", as the file copy of said exhibits cannot be accessed from the USB.

On November 17, 2021, petitioner filed a *Motion for Reconsideration (of the Resolution dated September 29, 2021)*.[38] However, respondent failed to file his comment thereto.[39]

In the Resolution dated March 30, 2022,[40] the Court partially granted the said *Motion for Reconsideration*, and **admitted** Exhibits "P-29","P-54-a","P-67","P-22079" to "P-22129", "P-26746-A" to "P-26746-F", "P-27281" to "P-27283", "P-27467" to "P-27471", "P-28327" to "P-28329", "P-29871" to

[38] Docket (CTA Case Nos. 10103 & 10183) – Vol. III, pp. 1256 to 1263.
[39] Records Verification dated February 17, 2022 issued by the Judicial Records Division of this Court, Docket (CTA Case Nos. 10103 & 10183) – Vol. III, p. 1295.
[40] Docket (CTA Case Nos. 10103 & 10183) – Vol. III, pp. 1301 to 1305.

"P-29881", "P-32610" to "P-32612", "P-33968" to "P-33970", "P-35391", "P-36858" to "P-36910", "P-36912" to "P-37201-A", "P-37203" to "P-37403", "P-37405" to "P-38531", "P-50115" to "P-50117", "P-51601" to "P-51786", "P-51791" to "P-52235", "P-52238" to "P-52774", "P-52776" to "P-52781", "P-52783" to "P-52893", "P-52895" to "P-53349", and "P-53867-AT" to "P-53867-BL"; **but still denied** Exhibits "P-26746", "P-27613", "P-33254", "P-35391", "P-36911", "P-37202", "P-37404", "P-48334", "P-52791", "P-53233", "P-53866", and "P-53867", for not being found in the case records, or there are no such marked documents in the records.

In the same Resolution, the Court directed respondent's counsel to: (1) explain why he failed to file the necessary manifestation on whether or not he would still be presenting his evidence, and (2) file the said required manifestation, both within five (5) calendar days from receipt thereof.

Considering the failure of respondent's counsel to comply with the said directive,[41] the right of respondent to present evidence was deemed waived, per this Court's Resolution dated May 12, 2022.[42]

On June 20, 2022, respondent's *Memorandum* was filed,[43] and on June 23, 2022, the *Memorandum for Petitioner* was submitted.[44]

The present consolidated cases were submitted for decision on July 11, 2022.[45]

THE ISSUE

As stipulated by the parties, the issue for the Court's resolution is as follows:

"WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR TAX CREDIT OF EXCISE TAXES IT PAID UNDER PROTEST FROM JULY TO

[41] Records Verification dated April 28, 2022 issued by the Judicial Records Division of this Court, Docket (CTA Case Nos. 10103 & 10183) – Vol. III, p. 1306.
[42] Docket (CTA Case Nos. 10103 & 10183) – Vol. III, pp. 1309 to 1310.
[43] Docket (CTA Case Nos. 10103 & 10183) – Vol. III, pp. 1311 to 1337.
[44] Docket (CTA Case Nos. 10103 & 10183) – Vol. III, pp. 1339 to 1378.
[45] Minute Resolution dated July 11, 2022, Docket (CTA Case Nos. 10103 & 10183) – Vol. III, p. 1380.

DECEMBER 2017, IN THE AGGREGATE AMOUNT OF P142,240,851.58."[46]

Petitioner's arguments:

Petitioner argues that it complied with the requirements under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, and Section 11 of Republic Act (RA) No. 1125, for the recovery of internal revenue taxes that have been erroneously, wrongfully, illegally or excessively assessed or collected; that it is exempt from excise tax until the end of the recovery period pursuant to the FTAA dated June 20, 1994, Section 81 of RA No. 7942 or the *Philippine Mining Act*, and Section 236 of the Department of Environment and Natural Resources (DENR) Administrative Order (DAO) No. 95-23; that Revenue Memorandum Circular (RMC) No. 17-2013 is null and void for failure to observe the proper procedural requirements before its issuance; that assuming *arguendo* that the revocation of the BIR Ruling No. 10-2007 is valid, the retroactive application of the assailed RMC violates Section 246 of the 1997 NIRC, as amended; and that the tax exemption privilege of petitioner under the FTAA is a contractual tax exemption granted by the government in exchange for a valid and material consideration, and thus, protected by the non-impairment clause of the 1987 Constitution.

Respondent's counter-arguments:

Respondent counter-argues that this Court has no jurisdiction over the instant petition; that petitioner failed to exhaust remedies provided under Section 4 of the Tax Code; that neither the Philippine Mining Act nor the DAOs issued by the DENR grant petitioner exemption from payment of excise taxes; that the FTAA did not grant petitioner exemption from payment of excise taxes; that petitioner's reliance on the BIR Ruling issued to it is misplaced; that RMC No. 17-2013 is valid and issued in accordance with law; that the issuance of RMC No. 17-2013 did not violate the non-impairment clause of the 1987 Constitution; and, that claims for refund are construed strictly against the taxpayer and in favor of the government.

[46] Proposed Stipulation of Issues, CJSFI, Docket (CTA Case Nos. 10103 & 10183) – Vol. II, p. 738. *cm*

THE COURT'S RULING

The *Petition for Review* lacks merit.

This Court has jurisdiction to entertain the present consolidated cases. Moreover, petitioner timely filed its administrative and judicial claims under Sections 204(C) and 229 of the NIRC of 1997, as amended.

In arguing that this Court is without jurisdiction to entertain the present case, respondent points out that it is the regular courts that has jurisdiction to assail RMC No. 17-2013.

We disagree.

Section 7 of RA No. 1125, as amended by RA No. 9282, provides this Court's exclusive appellate jurisdiction, *viz.*:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
> >
> > (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;"

Relative thereto, in *St. Mary's Academy of Caloocan City, Inc. vs. Hon. Kim Jacinto S. Henares, et al.*,[47] the Supreme Court held:

> "**It is the Court of Tax Appeals, <u>and not the regional trial courts</u>, that has jurisdiction to rule on the constitutionality and validity of issuances by the Commissioner of Internal Revenue.**
>
> xxx xxx xxx
>
> xxx. **The Regional Trial Court does <u>not</u> have the power to rule on the validity or constitutionality of the Commissioner of Internal Revenue's administrative issuances pertaining to the enforcement of the National Internal Revenue Code. <u>It is the Court of Tax Appeals that has the jurisdiction to rule on these matters</u>.**
>
> Jurisdiction is 'the power and authority of a court to hear, try[,] and decide a case.' It is conferred by law. Questions on a court's jurisdiction 'may be raised at any stage of the proceedings, even on appeal. In fact, courts may take cognizance of the issue even if not raised by the parties themselves.'
>
> **Petitioner argues that the regular court has jurisdiction to rule on the validity and constitutionality of administrative issuances. However, the law creating the Court of Tax Appeals is clear. Republic Act No. 1125, as amended by Republic Act No. 9282, states in Section 7:**
>
> > SECTION. 7. *Jurisdiction.* — The CTA shall exercise:
> >
> > (a) exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws

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[47] G.R. No. 230138, January 13, 2021.

> administered by the Bureau of Internal Revenue[.]

This Court has previously applied this provision to emphasize that it is the Court of Tax Appeals, and <u>not the regional trial courts</u>, that has jurisdiction over questions on the validity of tax issuances by the Commissioner of Internal Revenue.

In *Blaquera v. Rodriguez*,[48] a taxpayer filed a complaint before the Court of First Instance seeking to enjoin the Collector of Internal Revenue from collecting deficiency percentage taxes and from levying on execution any of the taxpayer's property to satisfy the tax liability. This Court ruled that the Court of First Instance did not have jurisdiction to hear the case; instead it should have been brought on appeal to the Court of Tax Appeals, pursuant to Section 7 of Republic Act No. 1125.

In *Commissioner of Internal Revenue v. Leal*,[49] the taxpayer questioned, through a petition for prohibition filed before the Regional Trial Court, a revenue memorandum order and a revenue memorandum circular that imposed lending investor's tax on pawnshops and subjected pawn tickets to documentary stamp tax. *Leal* again applied Section 7 of Republic Act No. 1125 to emphasize that **the jurisdiction over these cases questioning the Commissioner of Internal Revenue's issuances lies with the Court of Tax Appeals, <u>not the regular courts</u>. This Court declared the Regional Trial Court's ruling as void for being issued without jurisdiction**.

Subsequently, in *Asia International Auctioneers v. Parayno*,[50] the issue on jurisdiction again arose when a taxpayer questioned a revenue memorandum circular before the Regional Trial Court and prayed for its nullity. Citing both *Blaquera* and *Leal*, this Court reiterated that the Court of Tax Appeals has exclusive jurisdiction to review rulings or opinions of the Commissioner of Internal Revenue. It then refused to rule on the merits, saying it 'would only prove futile. Having declared the court a quo without jurisdiction over the subject matter of the instant case, any further disquisition would be *obiter dictum*.'

However, a year after *Asia International Auctioneers*, this Court decided *British American Tobacco v. Camacho*,[51] which petitioner cites as authority. There, this Court allowed the taxpayer to question revenue regulations and a revenue memorandum circular before the Regional Trial Court

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[48] 103 Phil. 511 (1958) [Per *J.* Endencia, *En Banc*].
[49] 440 Phil. 477 (2002) [Per *J.* Sandoval-Gutierrez, Third Division].
[50] 565 Phil. 255 (2007) [Per *C.J.* Puno, First Division].
[51] 584 Phil. 489 (2008) [Per *J.* Ynares-Santiago, *En Banc*]. *cm*

through a petition for injunction, as the Court of Tax Appeals' jurisdiction does not include cases where the constitutionality of a law or rule is challenged. Thus:

> Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same.

British American Tobacco was a deviation from the rulings in *Blaquera, Leal,* and *Asia International Auctioneers.*

This conflict has been resolved in *Banco de Oro v. Republic.*[52] *Banco de Oro* acknowledged the deviation and reverted to the earlier rulings in *Blaquera, Leal,* and *Asia International Auctioneers.* This Court said:

> **The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.**

This is now the prevailing rule, as affirmed in *COURAGE v. Commissioner of Internal Revenue*[53]." *(Emphases and underscoring added)*

Based on the foregoing disquisitions of the High Court, it is clear that this Court is endowed with jurisdiction to decide on the constitutionality and/or validity of the administrative issuances of respondent, such as RMC No. 17-2013.

Moreover, lest it be forgotten, the present consolidated cases, which are appeals of the inaction of respondent on petitioner's claims for refund,[54] are anchored on Sections 204(C) and 229 of the NIRC of 1997, as amended, which read:

"SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —

xxx xxx xxx

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[52] 793 Phil. 97 (2016) [Per *J.* Leonen, *En Banc*].
[53] 835 Phil. 298 (2018) [Per *J.* Caguioa, *En Banc*].
[54] Refer to pars. 3 and 4, *Petition for Review*, Docket (CTA Case No. 10103) – Vol. I, p. 11; pars. 3 and 4, *Petition for Review*, Docket (CTA Case No. 10183) – Vol. I, p. 7.

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*

"SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Emphases added*)

In connection therewith, it must be emphasized that it is already settled that Sections 204 and 229 fixed the period of two (2) years for filing an administrative claim for refund before the BIR and **to sue before this Court**.[55]

Thus, considering that the present consolidated cases sprang from the inaction on petitioner's administrative claims for refund, it is apt to conclude that the same falls under this Court's jurisdiction, and not with the regular courts. To hold otherwise would be to divide the jurisdiction of the appropriate forum in the resolution of claims for refund where the thesis for such claims is founded on the unconstitutionality or invalidity

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[55] Refer to *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021.

of an administrative issuance of respondent. Needless to state, splitting of jurisdiction is obnoxious to the orderly administration of justice.[56] To be sure, the decision on the refund claim must be issued by this Court, not only because it has been endowed with jurisdiction in accordance with the foregoing legal and jurisprudential bases, but also to avoid splitting of jurisdiction, conflicting decisions, and judicial instability.

Be that as it may, the aforequoted Sections 204 and 229 of the NIRC of 1997, as amended, are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with this Court. Both claims must be filed within the two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[57]

Furthermore, the above-quoted provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar aspect is illegal.[58]

Thus, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject thereof is an "erroneous or illegal tax".

In this case, the following are the pertinent dates relative to petitioner's claim for refund or tax credit:

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[56] *Cabili vs. Balindong*, A.M. No. RTJ-10-2225, September 6, 2011.
[57] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[58] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

Date of Payment	Amount	2-Year Prescriptive Period	Date of Administrative Claim	Date of Judicial Claim
July 5, 2017[59]	₱24,256,825.45	July 5, 2019	February 4, 2019[60]	July 4, 2019[61]
August 14, 2017[62]	6,775,735.85	August 14, 2019		
September 12, 2017[63]	30,406,527.40	September 12, 2019		
September 21, 2017[64]	7,950,241.89	September 21, 2019		
October 25, 2017[65]	7,901,783.10	October 25, 2019		October 8, 2019[66]
November 10, 2017[67]	34,856,039.96	November 10, 2019		
November 28, 2017[68]	18,142,773.44	November 28, 2019		
December 13, 2017[69]	11,950,924.49	December 13, 2019		
Total	**₱142,240,851.58**			

Clearly, petitioner's administrative and judicial claims for refund were filed within the two (2)-year period prescribed by law.

However, petitioner failed to prove that the subject of its refund claim is an "erroneous or illegal tax".

Under the FTAA and as supported by Section 81 of RA No. 7942, petitioner is exempt from payment of excise tax during the Recovery Period

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[59] Exhibits "P-35", "P-36", "P-36-a", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1117 to 1119.
[60] Exhibits "P-32", "P-32-a", and "P-32-b", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1086 to 1102.
[61] Docket (CTA Case No. 10103) – Vol. I, pp. 10 to 51.
[62] Exhibits "P-38", "P-39", and "P-39-a", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1135 to 1137.
[63] Exhibits "P-41", "P-42", and "P-42-a", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1153 to 1155.
[64] Exhibits "P-44", "P-45", and "P-45-a", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1172 to 1176.
[65] Exhibits "P-50", "P-51", and "P-51-a", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1194 to 1196.
[66] Docket (CTA Case No. 10183) – Vol. I, pp. 6 to 48.
[67] Exhibits "P-53", "P-54", and "P-54-a", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1199 to 1201.
[68] Exhibits "P-56", "P-57", and "P-57-a", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1215 to 1217.
[69] Exhibits "P-59", "P-60", and "P-60-a", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 1234 to 1236.

The issue on petitioner's exemption from the payment of excise tax during the Recovery Period has been discussed in *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*,[70] where the CTA *En Banc* held as follows:

> It must be noted that the basis for the tax exemption granted to petitioner is the FTAA it executed with the Republic of the Philippines on June 20, 1994, or prior to the effectivity of RA No. 7942.
>
> Under Executive Order (EO) No. 279 issued on July 25, 1987 during which time the President exercised legislative powers, the Secretary of Environment and Natural Resources were authorized to negotiate with foreign investors who wish to enter into FTAAs with the Government.
>
> It is within the purview of EO No. 279 that the present FTAA was signed on June 20, 1994 by Executive Secretary Teofisto Guingona, Jr. and Bryce G. Roxburgh, President of Arimco Mining Corporation, with the recommendation of Angel C. Alcala, Secretary of Environment and Natural Resources. This FTAA with Arimco Mining Corporation was eventually assigned to petitioner with the approval of the Government.
>
> The FTAA, as a duly perfected contract between petitioner and the Republic of the Philippines, is the law between the parties, and the stipulations, conditions, and obligations arising therefrom have the force of law between the contracting parties and should be complied with in good faith.
>
> Section 11.2 of the FTAA reads:
>
> "11.2 <u>Recovery of Pre[-]operating Expenses, Property Expenses and Taxes Paid During the Recovery Period</u>. The CONTRACTOR shall have a period of up to five (5) Contract years, counted from the Date of Commencement of Commercial Production within which to recover its: (a) Pre[-]operating Expenses; and (b) Property expenses incurred during the period in which Pre[-]operating Expenses are recovered, **after which period only shall the right of the GOVERNMENT to share in the Net Revenue**, as hereinafter defined, **accrue**." [*Boldfacing supplied*]
>
> The Government's share in the Net Revenue includes the collection of excise tax as provided for under Section 11.5 of the FTAA, which states:

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[70] CTA EB No. 2492, May 31, 2022.

> "11.5 <u>The GOVERNMENT's Share</u>. Provided that the Pre[-]operating Expenses of the CONTRACTOR and any of its Affiliates on the Contract Area, as defined in Section 2.42 in relation to Section 2.3 of this Agreement and as passed on audit by an independent and certified public accountant shall have been recovered by the CONTRACTOR pursuant to Section 11.2 of this Agreement, the GOVERNMENT's share of Net Revenue, as defined in the preceding section, shall be 60% while the CONTRACTOR's share shall be 40% of the same.
>
> **The GOVERNMENT shall receive 60% of Net Revenue less the following** costs, **taxes**, duties, fees and other expenses by the CONTRACTOR or otherwise **accrued by the CONTRACTOR in its books as an expense for any given Contract Year**, provided that payments made in any Contract Year of an expense accrued the previous Contract year and already charged to the GOVERNMENT for the previous CONTRACT YEAR shall no longer be chargeable;
>
> (a) **excise tax, including excise tax paid during the recovery of Pre[-]operating Expenses** as provided for in par. 1 of Section 11.2 of this Agreement but which was not actually recovered by the CONTRACTOR from the GOVERNMENT during the said period, for any amount paid by the CONTRACTOR which was not subject to deletion by the Board of Investments' incentives or other incentives laws, unless legislation is required to allow the deduction of the excise tax, in which case the deduction shall be made only after the appropriate legislation has been passed[.]" (*Boldfacing supplied*)

Thus, it is clear from the foregoing provisions that during the so-called "Recovery Period" – or the five (5) Contract Years beginning from the Date of Commencement of Commercial Production – the Government cannot collect from petitioner, as the FTAA Contractor, the Government's Share in the Net Revenue, which includes excise tax, because the Government's right to share shall **only accrue** after the Recovery Period.

The term "accrue" in legal parlance means "to come into existence as an enforceable claim." Per the terms of the FTAA, it is unambiguous that the Government's Share, including excise tax, shall only become an "enforceable claim" after the

Recovery Period. To construe that excise tax is collectible during the Recovery Period is a contravention of the terms of the FTAA.

Even if the FTAA does not make use of the phrase "tax exemption" during the Recovery Period, the construction of the words of Section 11.2, in relation to Section 11.5 of the FTAA, leads to no other conclusion than that the Government has no right to have a share in the taxpayer's Net Revenue and thus, precluded from collecting excise taxes from petitioner during the Recovery Period.

Verily, it was the intention of the parties when they entered into the FTAA to exempt petitioner from the payment not just of excise tax but all other applicable taxes and duties during the Recovery Period. As provided for in Section 11.1 thereof:

> "11.1 General Principles. – x x x
>
> Furthermore, the Department of Environment and Natural Resources, exerting its best efforts, shall assist the CONTRACTOR in negotiations with the Board of Investments and all other relevant agencies and instrumentalities of the GOVERNMENT for corporate tax and **other tax and duty holiday or other incentives, including the appropriate legislation, consistent with this Agreement, particularly during the five-year period for recovery of Pre[-]operating Expenses** as provided for in Section 11.2 hereof. x x x" (*Boldfacing supplied*)

The contractual tax exemption granted to petitioner under the FTAA is protected by no less than Section 10, Article III of the Constitution, which prohibits the State from passing any law that impairs the obligations of contracts. As held by the Supreme Court in *Manila Electric Company vs. Province of Laguna and Benito R. Balazo*:

> "x x x **Contractual tax exemptions, in the real sense of the term and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts**, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity. Truly, **tax exemptions of this kind may not be revoked without impairing the obligations of contracts**. x x x" (*Boldfacing supplied*)

Thus, even with the enactment of RA No. 7942 after the execution of the FTAA, the former law cannot impair the contractual tax exemption already granted under the latter agreement.

In fact, the Supreme Court has ruled in *Lepanto Consolidated Mining Co. vs. WMC Resources Int'l. Pty. Ltd., WMC Philippines, Inc. and Sagittarius Mines, Inc.*, that the provisions of RA No. 7942 do not retroactively apply to FTAAs executed prior to the effectivity of the said law, thus:

> "The pivotal issue to be resolved herein involves the propriety of the application to the Columbio FTAA of Republic Act No. 7942 or the Philippine Mining Act of 1995, particularly Section 40 thereof requiring the approval of the President of the assignment or transfer of financial or technical assistance agreements. Petitioner maintains that respondent failed to comprehend the express language of Section 40 of the Philippine Mining Act of 1995 requiring the approval of the President on the transfer or assignment of a financial or technical assistance agreement.
>
> To resolve this matter, it is imperative at this point to stress the fact that the **Columbio FTAA was entered into by the Philippine Government and WMC Philippines on 22 March 1995, undoubtedly before the Philippine Mining Act of 1995 took effect on 14 April 1995**. Furthermore, it is undisputed that said FTAA was granted in accordance with Executive Order No. 279 and Department Administrative Order No. 63, Series of 1991, which does not contain any similar condition on the transfer or assignment of financial or technical assistance agreements. Thus, it would seem that what petitioner would want this Court to espouse is the retroactive application of the Philippine Mining Act of 1995 to the Columbio FTAA, a valid agreement concluded prior to the naissance of the said piece of legislation.
>
> This posture of petitioner would clearly contradict the established legal doctrine that **statutes are to be construed as having only a prospective operation unless the contrary is expressly stated or necessarily implied from the language used in the law.** As reiterated in the case of *Segovia v. Noel*, a sound canon of statutory construction is that a statute operates prospectively only and never retroactively, unless the legislative intent to the contrary is made

manifest either by the express terms of the statute or by necessary implication.

Article 4 of the Civil Code provides that: "Laws shall not have a retroactive effect unless therein otherwise provided." According to this provision of law, **in order that a law may have retroactive effect it is necessary that an express provision to this effect be made in the law, otherwise nothing should be understood which is not embodied in the law**. Furthermore, it must be borne in mind that **a law is a rule established to guide our actions without binding effect until it is enacted, wherefore, it has no application to past times but only to future time, and that is why it is said that the law looks to the future only** and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions.

In the case at bar, **there is an absence of either an express declaration or an implication in the Philippine Mining Act of 1995 that the provisions of said law shall be made to apply retroactively, therefore, any section of said law must be made to apply only prospectively, in view of the rule that a statute ought not to receive a construction making it act retroactively, unless the words used are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied**." (*Boldfacing supplied*)

In fine, the provisions of RA No. 7942 and its implementing rules cannot be used as bases to rule that petitioner does not enjoy any tax exemption during the Recovery Period, precisely because the said law cannot be retroactively applied to the FTAA.

Assuming *arguendo* that RA No. 7942 applies in this case, an examination of its provisions shows nonetheless that FTAA contractors are granted certain tax exemptions during the Recovery Period. Section 81 of RA No. 7942 reads:

"Section 81. *Government Share in Other Mineral Agreements.* – The share of the Government in co-production and joint-venture agreements shall be negotiated by the Government and the contractor taking into consideration the: (a) capital investment of the project, (b) risks involved, (c) contribution of the project to the economy, (d) other factors that will provide for a fair and equitable sharing between the Government and the contractor. The

> Government shall also be entitled to compensations for its other contributions which shall be agreed upon by the parties, and shall consist, among other things, the contractor's income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholders, in case of a foreign national, and all such other taxes, duties and fees as provided for under existing laws.
>
> **The Government share in financial or technical assistance agreement shall consist of**, among other things, the contractor's corporate income tax, **excise tax**, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws.
>
> **The collection of Government share in financial or technical assistance agreement shall commence <u>after</u> the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive**." (*Boldfacing and underscoring supplied*)

The intent of Section 81 of RA No. 7942 in allowing the collection of the government share in FTAAs to commence only after the FTAA contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive, is to grant the FTAA contractor an exemption from payment of such Government Share, which includes excise taxes, among others, until it has fully recovered its expenses. Such construction is consistent with the goal of allowing the FTAA contractor to fully recover its expenses before it is made to pay the Government Share in the FTAA.

DAO No. 99-56 dated December 27, 1999 provided for the "Guidelines Establishing the Fiscal Regime of Financial or Technical Assistance Agreements." Section 3(g)(1) of DAO No. 99-56 reads:

> "Section 3. **Fiscal Regime of a Financial or Technical Assistance Agreement**. –
>
> xxx xxx xxx
>
> g. <u>Government Share</u>. cm

1. Basic Government Share. The following taxes, fees and other such charges shall constitute the Basic Government Share:

a) **Excise tax on minerals**;

b) Contractor's income tax;

c) Customs duties and fees on imported capital equipment;

d) Value-added tax on the purchase of imported equipment, goods and services;

e) Withholding tax on interest payments on foreign loans;

f) Withholding tax on dividends to foreign stockholders;

g) Royalties due the Government on Mineral Reservations;

h) Documentary stamp taxes;

i) Capital gains tax;

j) Local business tax;

k) Real property tax;

l) Community tax;

m) Occupation fees;

n) All other local Government taxes, fees and imposts as of the effective date of the FTAA;

o) Special Allowance, as defined in the Mining Act; and

p) Royalty payments to any Indigenous People(s)/Indigenous Cultural Community (ies).

From the Effective Date, the foregoing taxes, fees and other such charges constituting the Basic Government Share, if applicable, shall be paid by the Contractor: *Provided*, **That above items (a) to (g) shall not be collected from the Contractor upon the date of approval of the Mining Project Feasibility Study up to the end of the Recovery Period.** Any taxes, fees, royalties, allowances or other imposts, which should not be collected by the Government, but nevertheless paid by the

> Contractor and are not refunded by the Government before the end of the next taxable year, shall be included in the Government Share in the next taxable year. Any Value-Added Tax refunded or credited shall not form part of Government Share." (*Boldfacing supplied*)

Under Section 3(g)(1)(a) of DAO No. 99-56, excise taxes are not collected from the FTAA contractor from approval of the Mining Project Feasibility Study up to the end of the Recovery Period, which necessarily includes the whole five (5)-year Recovery Period.

DAO No. 99-56 was superseded by DAO No. 2007-12 dated June 20, 2007, which provided for a new fiscal regime for FTAAs. Section 4 thereof provides:

> "Section 4. **Fiscal Regime of a Financial or Technical Assistance Agreement**. –
>
> xxx xxx xxx
>
> b. <u>Basic Government Share</u>
>
> The Basic Government Share shall consist of all direct taxes, royalties, fees and related payments required by existing laws, rules and regulations to be paid by the Contractor. It shall be the minimum share that Government shall receive during any Calendar Year. The following national and local taxes, royalties and fees paid by the Contractor to the Government during a Calendar Year constitute the Basic Government Share:
>
> (a) Contractor's income tax;
>
> (b) Customs duties and fees on imported capital equipment;
>
> (c) Value-added tax on imported goods and services;
>
> (d) Withholding tax on interest payments on foreign loans;
>
> (e) Withholding tax on dividends to foreign stockholders;
>
> (f) Documentary stamp taxes;
>
> (g) Capital gains tax;
>
> (h) **Excise tax on minerals;**

(i) Royalties for Mineral Reservations and to Indigenous Peoples, if applicable;

(j) Local business tax;

(k) Real property tax;

(l) Community tax;

(m) Occupation fees;

(n) Registration and permit fees;

(o) All other national and local Government taxes, royalties and fees as of the effective date of the FTAA.

xxx xxx xxx

Starting from the effective date of the FTAA, the Contractor shall pay all applicable taxes, royalties, fees and other related payments subject to the following:

i. **From the date of approval of the Declaration of Mining Project Feasibility up to the end of the Recovery Period as defined in this Order, the Contractor shall pay the above Items (h) to (o) which includes the Excise Tax on Minerals**, Royalty on Mineral Reservations and to Indigenous Peoples, if applicable, and local taxes, fees and related imposts due to Local Government Units.

ii. After the Recovery Period, Contractor shall then pay all applicable taxes, fees, royalties and other related payments to the national and local Governments [Items (a) to (o) above].

iii. Any value-added tax on exported products refunded by or credited to the Contractor shall not form part of the Basic Government Share." (*Boldfacing supplied*)

Notwithstanding the amendment made in the fiscal regime of FTAAs as provided under DAO No. 2007-12, Section 12 thereof provides:

"Section 12. **Status of Existing FTAAs.** –

All FTAAs approved prior to the effectivity of this Administrative Order shall remain valid and be recognized by the Government: *Provided*, That should a Contractor desire to amend its FTAA, it shall do

> so by filing a Letter of Intent (LOI) to the Secretary thru the Director: *Provided further*, **That if the Contractor desire to amend the fiscal regime of its FTAA, it may do so by seeking for the amendment of its FTAA's whole fiscal regime by adopting the fiscal regime provided herein**: *Provided finally*, That any amendment of an FTAA other than the provision on fiscal regime shall require negotiation with the FTAA Negotiating Panel and that every amendment of an FTAA shall require the recommendation of the Secretary for approval of the President of the Republic of the Philippines." (*Boldfacing supplied*)

DAO No. 2007-12 did not intend to amend the fiscal regime of existing FTAAs, including the subject FTAA. DAO No. 2007-12 is cognizant that the adoption of the fiscal regime provided therein requires the amendment of existing FTAAs. Thus, without such amendment, the fiscal regime in the subject FTAA remains the same.

Relevantly, the landmark case of *La Bugal B'laan Tribal Association, Inc., et al. vs. Victor O. Ramos, Secretary, Department of Environment and Natural Resources, et al.*, decided by the Supreme Court, held that an FTAA contractor is exempt from certain national internal revenue taxes, including excise tax, during the Recovery Period, thus:

> "Specifically, under the fiscal regime, the government's expectation is, *inter alia*, the receipt of its share from the taxes and fees normally paid by a mining enterprise. On the other hand, **the FTAA contractor is granted by the government certain fiscal and non-fiscal incentives to help support the former's cash flow during the most critical phase (cost recovery) and to make the Philippines competitive with other mineral-producing countries**. After the contractor has recovered its initial investment, it will pay all the normal taxes and fees comprising the basic share of the government, plus an additional share for the government based on the options and formulae set forth in DAO 99-56." (*Boldfacing supplied*)

On what these fiscal and non-fiscal incentives are, the Supreme Court elucidated as follows:

> "**These incentives consist principally of the <u>waiver of national taxes</u> during the cost recovery period of the FTAA**. During such period, the contractor pays only part of the basic government's share in taxes consisting of local government taxes and fees. These are the local business tax, real property tax, community tax, *om*

> occupation fees, regulatory fees, all other local taxes and fees in force, and royalty payments indigenous cultural communities, if any.
>
> **These national taxes, however, are <u>not to be paid</u> by the contractor: (i) excise tax on minerals**; (ii) contractor's income tax; (iii) customs duties and fees on imported capital equipment; (iv) value-added tax on purchases of imported equipment, goods and services; (v) withholding tax on interest payments on foreign loans; (vi) withholding tax on dividends to foreign stockholders; and (vii) royalties due the government on mineral reservations.
>
> Other incentives to the contractor include those under the Omnibus Investment Code of 1997; those for the use of pollution control devises and facilities; income tax carry forward of losses (five-year net loss carry forward); and income tax accelerated depreciation." (*Boldfacing and underscoring supplied*)

> In sum, under the terms of the FTAA, respondent has no authority to collect excise taxes as the Government's right to have a share in the Net Revenue of petitioner during the Recovery Period has not accrued. (*Boldfacing and underscoring in the original, citations omitted*)

Based on the foregoing discussions, petitioner is exempt from the payment of excise tax during the recovery period.

Notwithstanding its excise tax exemption during the recovery period, petitioner failed to prove that it is entitled to the refund claimed.

The FTAA is explicit that all taxes, including excise tax, collected during the Recovery Period is recoverable during the years they were incurred, provided that the amount collected is **detrimental to petitioner's recovery of Pre-operating and Property Expenses**. In the event that there is no recovery, or the recovered amount is less than the tax paid or incurred, then petitioner's recourse is to **deduct the amount not recovered from the Government's Share**.[71]

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[71] *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*, CTA EB No. 2492, May 31, 2022.

Section XI, paragraph 11.2 of the FTAA dated June 20, 1994,[72] to which petitioner is an assignee of the original contractor (*i.e.*, Arimco Mining Corporation),[73] states the *"recovery period"* or the period within which petitioner, as assignee to the said Agreement, may recover its Pre-operating Expenses and Property expenses. It reads as follows:

> "11.2 Recovery of Preoperating Expenses, Property Expenses and Taxes Paid During the Recovery Period. **The CONTRACTOR shall have a period of up to five (5) Contract Years, counted from the Date of Commencement of Commercial Production within which to recover its: (a) Preoperating Expenses; and (b) Property expenses incurred during the period in which Preoperating Expenses are recovered, after which period only shall the right of the GOVERNMENT to share in the Net Revenue, as hereinafter defined, accrue.**
>
> However, if after the lapse of the period mentioned in the preceding paragraph, the CONTRACTOR has not yet fully recovered its Preoperating Expenses and Property expense incurred during the Period in which Pre-Operating Expenses were incurred, it shall be allowed to recover the same as a depreciation allowance deductible against the distributable Net Revenues over the period of the succeeding three Contract Years.
>
> Property expenses incurred during the period in which Preoperating Expenses are recovered shall not for the purpose of this Section include Major Capital Expenditure as defined in Section 11.7.
>
> **All taxes, duties, fees, costs, levies and imposts paid by the CONTRACTOR and which are detrimental to the CONTRACTOR's recovery of Preoperating Expenses and Property Expenses during the five (5) Contract Years contemplated in this Section shall be recoverable by the CONTRACTOR, whenever possible during the year(s) such expenditures were actually incurred. Any amount not recovered shall be deducted from the GOVERNMENT's Share as more specifically provided in Section 11.5 of this Agreement**, unless legislation is required to allow the necessary deductions, in which case the deductions shall be made only after the appropriate legislation has been passed.
>
> All the items recoverable by the CONTRACTOR under Section 11.2, including the on-going Mineral Exploration

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[72] Exhibit "P-2", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 915 to 968.

[73] Exhibits "P-4", "P-4-a", "P-5", and "P-6", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 979 to 998. cmn

costs incurred by the CONTRACTOR during the five-year recovery period, shall be recovered from Net Revenue, as the term 'Net Revenue' is defined under Section 11.4 of this Agreement."[74] *(Emphases added)*

Parenthetically, certain phrases, as used in the foregoing stipulations, mean as follows:

"2.10 **'Commercial Production'** means the production of sufficient quantity of minerals to sustain economic viability of Mining Operations as specified in the approved Work Program. Production of copper, gold and silver ore required to test and/or develop a processing system or supply a pilot plant used for such testing shall not be considered in the determination of Commercial Production."

xxx xxx xxx

"2.12 **'Contract Year'** means a period of twelve (12) consecutive months counted from the Effective Date of this Agreement or from the anniversary of such Effective Date.

2.13 **'CONTRACTOR'** means Arimco Mining Corporation and its <u>assignee</u> or assignees of any interest under this Agreement provided such assignment of any such interest is accomplished pursuant to the provisions hereof.

2.14 **'Date of Commencement of Commercial Production'** shall mean 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 as outlined in the Declaration of Mining Feasibility as hereinafter defined."[75] (*Emphasis added*)

Indeed, in accordance with the foregoing provisions, petitioner, as assignee, and now, the contractor to the said FTAA dated June 20, 1994, is entitled to recover its Pre-operating and Property Expenses, for a period of five (5) years, which begins from the date of commencement of commercial production, before the right of the Government to share in the Net Revenue (which includes, *inter alia*, the collection excise taxes) accrues.

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[74] Exhibit "P-2", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 938 to 939.
[75] *Id.*, Docket (CTA Case Nos. 10103 & 10183) – Vol. II, pp. 919-920.

Moreover, the FTAA dated June 20, 1994 contemplates and addresses the situation where, during the said five (5)-year period, taxes, among others, were paid by petitioner. In such situation, the taxes paid may be recovered by petitioner. However, the payment of the said taxes must be shown to be *"detrimental to the CONTRACTOR's recovery of Preoperating Expenses and Property Expenses"*; and to be recovered, whenever possible, *"during the year(s) such expenditures were actually incurred."* In any event, in case the same taxes are *not* recovered, the amount thereof should be deducted in the Government's share. In this latter case, petitioner, in effect, acceded, as assignee to, and the present contractor of, the said FTAA, that the excise taxes paid during the said five (5)-year period may not be recovered, for any or whatever reason, but would eventually be attributed to share of the Government.

In the letter dated March 27, 2013,[76] petitioner advised the Secretary of the DENR as follows:

> "We are pleased to advise that on February 26, 2013, the Didipio Project was able to mill 301,903 tonnes and achieve the 15% production capacity. With this development, we wish to inform you that the Date of Commencement of Commercial Production in accordance with Section 2.14 of the FTAA is April 1, 2013, which is the first date of the second calendar quarter."

Thus, the "recovery period", in this case, starts from April 1, 2013, and ends on March 31, 2018. Correspondingly, petitioner is entitled to recover its Pre-operating and Property Expenses, within such period.

Moreover, Section II of the FTAA provides for a definition of terms. The definition of the word "detrimental" is, however, not provided therein. With the absence of a technical definition, resort to the plain or literal meaning of the word is in order.[77]

The term "detriment" means "[a]ny loss or harm suffered in person or in property."[78] Thus, per the FTAA, petitioner must show that the collection of excise tax during the Recovery Period resulted in loss or harm in its person or property.

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[76] Exhibit "P-28", Docket (CTA Case Nos. 10103 & 10183) – Vol. II, p. 1075.
[77] *Norton Resources and Development Corporation vs. All Asia Bank Corporation,* G.R. No. 162523, November 25, 2009.
[78] BLACKS'S LAW DICTIONARY (Rev. 4th Ed. 1968), p. 537.

Petitioner, however, failed to prove that the payments of the subject excise taxes, during the said five (5)-year period, were detrimental to its recovery of the said Pre-operating and Property Expenses. There is no specific evidence which show such fact.

Notwithstanding petitioner's failure to establish its entitlement to its refund claim of the excise taxes paid during the Recovery Period, it is not without any recourse. As provided for under Section 11.2 of the FTAA, "Any amount not recovered shall be deducted from the GOVERNMENT'S Share[.]" Even Section 11.5 of the FTAA recognizes that "excise tax, including excise tax paid during the recovery of Pre-operating Expenses" may be deducted from the Government Share in Net Revenue.[79]

In sum, We see no valid ground to grant the present claim for refund.

Our consistent ruling is that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[80]

WHEREFORE, in light of the foregoing considerations, the present consolidated *Petitions for Review* are **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[79] *Oceanagold (Philippines), Inc. vs. CIR*, CTA EB No. 2492, May 31, 2022.
[80] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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