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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5305

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 29 1997

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DECISION

This case involves a claim for tax credit in the amount of P1,001,439.41 equivalent to the value-added tax (input tax) paid by petitioner herein on its domestic purchases of goods and services for the period covering January 1, 1994 to December 31, 1994.

Petitioner is a domestic corporation primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores found in Parcel One of the Surigao Mineral Reservation area in the Municipality of Claver, Surigao del Norte and was granted by respondent permit to engage in such business under BIR Permit No. 0057-MP-90 (Exh. "G", p. 95, CTA records) on June 22, 1990.

Effective January 1, 1988, it registered itself with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) entity and was issued VAT Registration Certificate No. 32A-0-003939 (Exh. "H", p. 98, C.T.A. records). It also registered with the Board of Investments as a non-pioneer enterprise and is in possession of BOI Certificate No. EP 88-306 (Exhibit "I").

For the period from January 1, 1994 to December 31, 1994, petitioner alleges that it realized zero-rated export sales amounting to **ONE HUNDRED THREE MILLION FOUR HUNDRED NINETY TWO THOUSAND THREE HUNDRED NINETY THREE PESOS AND 45/100** (P103,492,393.45) which was paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with existing regulations of the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas).

For the same period, petitioner paid VAT input taxes on its domestic purchases of taxable goods and services amounting to **ONE MILLION ONE THOUSAND FOUR HUNDRED THIRTY NINE** PESOS AND 41/100 (P1,001,439.41) which allegedly were directly attributable to its zero-rated export sales amounting to P103,492,393.45.

The abovementioned zero-rated export sales and VAT input taxes paid on its domestic purchases of taxable goods and services are broken down as follows:

PERIOD COVERED	ZERO-RATED EXPORT SALES	DOMESTIC PURCHASE OF TAXABLE GOODS/ SERVICES	VAT INPUT TAXES
1/1/94-3/31/94	P 20,500,105.97	P 1,907,151.30	P 190,715.13
4/1/94-6/30/94	26,413,983.18	3,207,030.98	320,703.05

7/1/94-9/30/94	20,442,370.09	2,623,470.57	262,347.15
10/1/94-12/31/94	36,135,934.21	2,276,740.80	227,674.08
TOTAL	P103,492,393.45	P10,014,393.65	P1,001,439.41

The corresponding VAT returns comprising the aforestated periods were filed with and received by the respondent (Exhibits "J", "K", "L", "M", and "N" and submarkings).

Petitioner asserted that the VAT input taxes which it paid have not been applied to any of its VAT output tax liability during the same period or to any succeeding quarter or quarters and that the VAT input taxes of P1,001,439.41 are duly supported by sales invoices and/or official receipts issued by its suppliers (Exhs. "C" to "C-339" and "D" to "D-998").

Hence, on February 21, 1995, petitioner filed with respondent a written claim for refund of VAT input taxes in the amount of P878,981.64 (Exh. "W") which it amended later on July 20, 1995 by filing an amended written claim for refund/issuance of a tax credit certificate in the amount of P1,001,439.41 (Exh. "Y").

Since the two-year prescriptive period for the filing of a claim for refund was about to lapse sans any action on the part of the respondent, petitioner instituted the instant case on December 18, 1995.

In her Answer filed on January 18, 1996, respondent sets forth the following special and affirmative defenses:

> 1. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

2. Petitioner's claim for refund of alleged excess VAT input taxes is still under investigation by respondent's bureau;

3. Petitioner failed to show compliance with the provision of Section 16(c)(3) of Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88;

4. The input taxes allegedly paid on its local purchases are not supported by invoices pursuant to Section 108 of the Tax Code, as amended;

5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;

6. One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute.

The lone issue to be resolved in this case is whether or not petitioner is entitled to the issuance of a tax credit certificate amounting to P1,001,439.41 representing VAT input taxes paid on its domestic purchases of taxable goods and services for the period from January 1, 1994 to December 31, 1994.

The provisions of law applicable in the case at bar are Sections 100 (a)(1), 102 (a)(2), 104 (b), and 106 (a) of the Tax Code, pertinent portions of which are quoted hereunder:

"Sec. 100. ***Value-added tax on sale of goods.*** - (a) ***Rate and base of tax.*** -There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: Provided, That the following sales by VAT-registered persons shall be subject to 0%:

(1) Exports sales; x x x."

"Sec. 102. *Value-added tax on sale of services.* - (a) ***Rate and base of tax.*** - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services. x x x *Provided* That the following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

x x x x x x x x x

(2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines:

x x x x x x x x x."

"Sec. 104. ***Tax Credits.*** - xxx xxx xxx.

(b) Excess output or input tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 106." (Underlining ours)

"Sec. 106. ***Refunds or tax credits of input tax.*** - (a) ***Export Sales.*** - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulation of the Central Bank of the Philippines." (Emphasis supplied)

In this case, petitioner submitted documentary evidence necessary to substantiate its claim for refund and/or tax credit pursuant to Section 16 of Revenue Regulations No. 5-87, as amended by

Revenue Regulations No. 3-88 such as Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552, Exhs. "X" and "Z"), photocopy of supplier's invoices and/or official receipts (Exhs. "C" to "C-339" and "D" to "D-988"); and bank credit advises (Exhs. E & F to F-42).

Based on the above-enumerated provisions of the Tax Code and the facts presented, petitioner is rightfully entitled to a refund or to the issuance of a tax credit certificate for the VAT input taxes on its domestic purchases of goods and services. And this conclusion finds support in Section 8(a) of Revenue Regulations No. 5-87 which provides as follows:

> "**Section 8.** ***Zero-rating.*** - (a) In general - A zero-rated sale is a taxable transaction for value-added tax purposes. A sale by a VAT-registered person of goods and/or services taxed at zero-rate shall not result in any output tax. The input tax on his purchases of goods or services related to such zero-rated sale shall be available as tax credit or refundable in accordance with Section 16 of these Regulations." (Underscoring ours)

In view of the voluminous sales invoices and official receipts which the petitioner had to present during the trial to buttress its claim and in compliance with the requirement of CTA Circular No. 1-95, it engaged the services of Punongbayan and Araullo, an independent Certified Public Accountant (CPA). Their findings as embodied in their Certification marked as Exhibit "A" (p. 45, CTA records) may be summed up thus:

1. The VAT paid per summaries prepared by petitioner for the period January 1, 1994 to December 31, 1994-Head Office (Exhibit "B") and Minesite (Exhibit "B-1") in the amount of P1,001,493.81 are properly recorded in the books;

2. The date of the invoices and/or official receipts is within the period covered in the application;

3. The suppliers' VAT numbers are indicated on the invoices and/or official receipts;

4. The suppliers' invoices and/or official receipts on file represent original copies;

5. The VAT paid are correctly and properly computed;

6. The export sales indicated in the summary are recorded in the books.

7. However, input tax credits totalling P79,009.28 were found to have either no supporting invoices or official receipts, or if otherwise supported by such documents, there were erroneous entries therein or an erroneous tax base was used, or in a few other transactions, the petitioner returned supplies thus resulting in the adjustment of amounts reflected in some invoices or receipts as specified in the "Summary of Findings".

After a thorough study of all the exhibits offered by the petitioner, the Court concurs with the aforementioned findings of Punongbayan and Araullo. The evidence offered by respondent consisting only of Letter of Authority No. 62176 dated July 25, 1995 and the signature of Mr. Hernani S. Arboleda thereon (Exhibits "1" and "1-A", respectively; p. 129, CTA records) did not, after all, controvert the evidence of the petitioner. Said exhibits merely authorized RO Leticia Lorna Dosado/GS Julita Batoon of Revenue District 47, East Makati to examine petitioner's books of accounts and other accounting records in connection with its claim for refund of VAT for the subject period.

In conclusion, this Court finds that petitioner is entitled to a lesser amount of P922,419.19 after taking into consideration the exhibits offered by the petitioner including the findings of the independent CPA. The details of the computation are specified below, thus:

	Input Taxes Paid (Exhibit "B") Head Office	Mine Site	Summation Per Quarter	Amount (Exh. "Y") Claimed w/ BIR	Amount Verified
January 1994	P 10,199.81	P 62,559.00			
February 1994	15,773.38	33,925.73			
March 1994	9,723.77	58,533.59	P 190,715.28	P 190,715.13	P 190,715.13
April 1994	P 53,871.85	P 39,319.93			
May 1994	42,812.89	56,018.95			
June 1994	82,151.75	46,516.74	320,692.11	320,703.05	320,692.11
July 1994	P118,269.86	P 33,304.71			
August 1994	20,425.92	30,878.04			
September 1994	13,689.92	45,843.89	262,412.34	262,347.15	262,347.15
October 1994	P122,909.11	P 32,041.43			
November 1994	2,322.68	23,298.89			
December 1994	19,886.13	27,215.84	227,674.08	227,674.08	227,674.08
Total			P1,001,493.81	P1,001,439.41	P1,001,428.47

Less findings arrived at by the independent CPA:
(p. 48, Exh. D of Exh. A, p. 94, CTA rec.)

a. Erroneous entry	P 72,005.71	
b. No invoice	4,741.82	
c. Returned supplies	835.36	
d. No official receipt	827.58	
e. Not a VAT supplier	272.73	
f. No original sales invoice	259.09	
g. Erroneous tax base	65.99	79,009.28

AMOUNT REFUNDABLE P 922,419.19

WHEREFORE, in view of the foregoing, respondent is hereby **ORDERED** to **ISSUE** a tax credit certificate in favor of petitioner in the amount of P922,419.19, representing VAT input taxes for the period January 1, 1994 to December 31, 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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