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:

OCT 13 2023 9:05 AM

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RESOLUTION

MANAHAN, *J.*:

This resolves petitioner's *Motion for Reconsideration (of the Decision dated June 1, 2023)*,[1] filed on June 23, 2023, with respondent's *Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated 23 June 2023)*, filed on July 18, 2023.

Petitioner assails the Decision, dated June 1, 2023, which denied its claim for refund of alleged erroneously, illegally and wrongfully collected excise taxes for the period July to December 2017, in the amount of Php142,240,851.58.[2]

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[1] Docket, Vol. III, pp. 1414-1430.
[2] Docket, Vol. III, pp. 1383-1413.

Petitioner argues that the Court erred in requiring petitioner to prove that the payment of excise tax during the recovery period is detrimental to petitioner. Respondent, on the other hand, cites the Court's findings and reiterates that petitioner was not able to prove its entitlement to the claimed refund.

Upon review of facts of the instant case, the law and jurisprudence, the Court finds that there is a need to clarify the determination of the recovery period. Nevertheless, the Court still denies petitioner's *Motion for Reconsideration.*

The recovery period is provided in Section XI, paragraph 11.2 of the Financial or Technical Assistance Agreement (FTAA) dated June 20, 1994, as follows:

> 11.2 Recovery of Pre-operating 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) 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.[3]

The "date of commencement of commercial production" is defined in the FTAA, as:

> 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."[4]

Section 7 of Department of Environment and Natural Resources Administrative Order (DAO) No. 12-2007 provides:

> Section 7. Recovery of Pre-Operating Expenses. –
>
> a. Recovery Period. Considering the high risk, high cost and long term nature of an FTAA Mining Operation, the Contractor shall be given an opportunity to recover the

[3] Docket, Vol. II, Exhibit "P-2", p. 938.
[4] Docket, Vol. II, Exhibit "P-2", p. 920.

> expenses during its pre-operating period. After this period, the Government shall receive its rightful share from the national patrimony. **Recovery Period**, as used in this Order, **shall be a maximum of five (5) years or at a date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first**. (*boldfacing and underscoring supplied*)

Relevantly, DAO No. 96-40 defined the term "commercial production", as follows:

> Sec. 5. Definition of Terms. –
>
> i. "Commercial Production" refers to the production of sufficient quantity of minerals of sustained 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**. (*emphasis supplied*)

On March 15, 2005, petitioner submitted a Partial Declaration of Mining Feasibility (PDMF).[5] The same was approved by the Mines and Geosciences Bureau (MGB) on October 11, 2005.[6] While the PDMF did not specifically state a commencement date, the PDMF approval on October 11, 2005 is allegedly petitioner's permit to operate the Didipio Project,[7] to "process gold and copper at 2 million tonnes per annum to produce an average annual production of 95,000 ounces of gold and 10,000 tonnes of copper concentrate."[8]

Following Section 5(i) of DAO No. 96-40, the date of commencement of petitioner's commercial production is on October 11, 2005, which is way earlier than petitioner's declaration on April 1, 2013. Counting five (5) years from October 11, 2005, petitioner's recovery period ended on October 11, 2010.[9] Thus, there is no erroneous or illegal collection of excise taxes from petitioner for the period July to December 2017, since the recovery period has already ended on October 11, 2010.

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[5] Docket, Vol. II, Exhibit "P-7", pp. 999-1000.
[6] Docket, Vol. II, Exhibit "P-8", pp. 1001-1002.
[7] Docket, Vol. III, Memorandum for Petitioner, par. 8, p. 1344.
[8] Docket, Vol. II, Exhibit "P-7", p. 1000.
[9] Oceanagold (Philippines), Inc. v CIR, CTA Case No. 9736, August 10, 2023.

All told, the result is the same, petitioner's claim for refund is denied.

WHEREFORE, petitioner's *Motion for Reconsideration (of the Decision dated June 1, 2023)* is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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