REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARCOPPER MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO.4603 & 4677

JOSE U. ONG, Commissioner of Internal Revenue,
Respondent.

Promulgated:
OCT 03 1995

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DECISION

This is a consolidated case involving a claim for refund limited to the portion of input Value Added Taxes (VAT) paid during the years 1989 and 1990 in the respective amounts of P6,373,350.38 and P8,149,074.90.

Petitioner is a domestic corporation duly organized and existing under Philippine laws and duly registered with the Board of Investments (BOI) as an export producer of copper concentrates. Petitioner sells its copper concentrates (Exh. A) to the Philippine Association of Smelters and Refiners, Inc., (PASAR), another BOI registered export producer (Exh. B) pursuant to a copper concentrate agreement between the two parties dated July 10, 1990 (Exh. C).

As a duly registered VAT taxpayer and exporter, Petitioner is subject to 0% VAT and is therefore allegedly entitled to 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 the output tax pursuant to Section 106 of the National Internal Revenue Code (NIRC).

Petitioner filed its quarterly VAT returns showing unused input tax in the amount of Thirty Eight Million Two Hundred Eighty Six Thousand Eight Hundred Seventy Four and 91/100 (P38,286,874.91) Pesos for 1989 and Forty Four Million Three Hundred Twenty Thousand Six Hundred Eleven and 62/100 (P44,320,611.62)pesos for 1990. Petitioner correspondingly filed applications using the prescribed form for tax credit/refund of the VAT paid for the same years.

Originally, the claims for refund by petitioner for 1989 and 1990 were P44,640,043.29 and P42,435,968.22 respectively. However, since Respondent has already granted a partial refund (Exhs. E, F, O and P), Petitioner is now seeking the sum of only P6,373,350.38 for 1989 and P8,149,074.90 for 1990 --- the amounts disallowed by the Respondent on the ground that the input taxes they represent correspond to local sales of PASAR.

Hence, this appeal.

The issue brought for resolution is whether or not Petitioner is entitled to the refund of the amounts which were disallowed on the ground that those amounts correspond to the local sales of PASAR.

We answer in the affirmative.

The applicable provision of law is Section 2 of Revenue Regulations No. 2-88 (The Application of Zero Rate, Exemption On Certain Transactions Related To Exports and Refunds of Input Taxes) which provides, thus:

> Sec. 2. *Zero-rating.* - (a) Sales of raw materials to BOI-registered exporters.- Sales of raw materials to export-oriented BOI-registered enterprises whose export sales, under rules and regulations of the Board of Investments, exceed seventy percent (70%) of total annual production, shall be subject to zero-rate under the following conditions:
>
> "(1) The seller shall file an application with the BIR, ATTN.: Division, applying for zero-rating for each and every separate buyer, in accordance with Section 8(d) of Revenue Regulations No.5-87. The application should be accompanied with a favorable recommendation from the Board of Investments."
>
> "(2) The raw materials sold are to be used exclusively by the buyer in the manufacture, processing or repacking of his own registered export product; (Emphasis supplied)

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During the hearing of the case, it was undisputed that PASAR actually exported 75.67% in 1989 and 77.26% in 1990 (Exhs. K-1 and K-2) of its manufactured goods. Under the above-quoted law, "Sales of raw materials to export-oriented BOI-registered enterprises whose export sales, under rules and regulations of the Board of Investments, exceed seventy percent (70%) of total annual production shall be subject to zero-rate..." Thus, Petitioner's claim for refund is within the ambit of the law.

It was also established during the trial that the products of the Petitioner sold to PASAR were indeed actually used "in the manufacture, processing or repacking of his (buyer's) own registered export product" when Mr. Leonardo Vinzon, petitioner's supervisor testified, thus:

> Q. As a supplier of copper concentrates can you please tell us who your customers are?
>
> A. Our main buyer is PASAR which is Philippine Associated Smelting and Refining Corporation and the rest of our production was sold to foreign buyers.
>
> Q. Can you please tell us what is the nature of PASAR as your main buyer?
>
> A. PASAR is a BOI registered enterprise and engaged in the smelting and refining of raw materials such as

copper, gold and silver among others and its final products were subsequently exported to the international market.

Q. You mentioned that PASAR is a BOI registered enterprise, do you have any evidence to prove this?

A. I have here a certified true copy of PASAR'S certificate of registration with the BOI.

ATTY. GONZALES

Your Honors, we request that this certified true copy of BOI certificate of registration of PASAR be marked as our Exhibit "B".

Q. Being your main customer, do you have any knowledge as to the disposition of the copper concentrates you supplied to PASAR?

A. <u>Yes, sir. PASAR utilizes these copper concentrates as raw materials for their refining and smelting activity and its products are being exported abroad as evidenced by this supplier agreement with them and their 1990 annual report.</u>

ATTY. GONZALES

Your Honors, a copy of this document is attached to the docket of this case which forms part of the records, so we request, your Honor, that this document be marked as our exhibit, the copper concentrates agreement between PASAR and Marcopper Mining Corporation dated July 10, 1990 be marked as Exhibit "C". (Emphasis supplied)

which testimony was corroborated by documentary evidences. (Exhs. C, D, D-1).

From the foregoing, it is indubitably clear that in order for the Petitioner to avail of "zero-rating" of input taxes, the only requirement to be complied is for it to sell its "raw materials to export-oriented BOI-registered enterprises whose export sales...exceed seventy percent (70%) of total annual production..." In other words, the law does not require a one-hundred percent export sales. Hence, local sales in excess of the 70% requirement may be allowed, contrary to the contention of the Respondent. The above requirement, although also subject to the condition that "the raw materials sold are to be used exclusively by the buyer in the manufacture, processing or repacking of his own registered export product" yet, in this particular case, was satisfactorily established by the Petitioner through documentary and testimonial evidences. Hence, We cannot do otherwise but grant Petitioner's claim for refund.

It is, however, lamentably observed that the Respondent and/or her counsels, instead of being satisfied with run-of-the-mill generalities in their defenses, should have pursued other avenues within the law to prevent diffusion of revenues brought about by mediocre defenses. Much could have been done had Respondent not submitted this case for decision without offering any evidence except "the pleadings and the records of the case" and without any Memorandum. Let the Respondent, therefore, be reminded that We can only decide cases as they are presented to us. Nothing more and nothing less.

WHEREFORE, in all the foregoing, Respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of the Petitioner in the total amount of P14,522,425.28 representing the 1989 and 1990 input taxes improperly disallowed by her.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Assocaite Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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