REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SEMIRARA MINING CORPORATION, Petitioner,	C.T.A. CASE NOS. 7822 and 7849
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 28 2011 ; 11:57 pm

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DECISION

Fabon-Victorino, J.:

These consolidated Petitions for Review were separately filed by petitioner Semirara Mining Corporation (SMC) on August 08, 2008 and November 10, 2008 and docketed as CTA Case Nos. 7822 and 7849, respectively. Both seeks a refund or issuance of a Tax Credit Certificate (TCC) of the total amount of P77,253,245.39, allegedly representing the final withholding value-added tax (VAT) on petitioner's sales of coal for the period covering July 01 to December 31, 2006 which its client National Power Corporation (NPC) erroneously withheld and remitted to the Bureau of Internal Revenue (BIR). The amount of P77,253,245.39 is broken down as follows:

CTA Case No.	**Period Covered (2006)**	**Amount of Final VAT deducted, withheld and remitted by NPC**	
7822	July	P 13,543,640.18	
	August	13,697,376.30	
	September	9,820,985.56	P 37,062,002.04
7849	October	P 13,185,204.60	
	November	14,088,998.88	
	December	12,917,039.87	40,191,243.35
Total			**P77,253,245.39**

Petitioner SMC, is a duly organized and existing domestic corporation with principal office at 2nd Floor, DMCI Plaza, 2281 Chino Roces Avenue, Makati City, Metro Manila.[1] It is registered with the Bureau of Internal Revenue (BIR) as a non-VAT enterprise engaged in the coal mining business in Semirara, Caluya, Antique with Taxpayer Identification No. (TIN) No. 000-190-324-000.[2] It conducts business by virtue of Presidential Decree (PD) No. 972, otherwise known as the "Coal Development Act of 1976".

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[1] Par. 1, The Facts, Joint Stipulation of Consolidated Facts and Issues (JSCFI), docket, p. 185.
[2] Exhibit "A," Par. 6, Joint Stipulation of Consolidated Facts and Issues (JSCFI), docket, p. 186.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) authorized to determine and approve applications for refund or issuance of TCC, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

In July 1977, petitioner's predecessors-in-interest[4] entered into a Coal Operating Contract (COC)[5] with the Philippine Government, through the Bureau of Energy Development (BED) of then Ministry of Energy, pursuant to PD No. 972. Subsequently, the COC and all the rights, privileges and obligations appurtenant thereto were transferred to Semirara Coal Corporation (SCC) by virtue of a Deed of Assignment[6] dated April 7, 1980. In 2002, SCC changed its corporate name to Semirara Mining Corporation (SMC), the herein petitioner.

As a coal mine operator, SMC sells its coal production to various customers, among which is the National Power Corporation (NPC), a government-owned and controlled corporation, in accordance with the duly executed Coal Supply Agreement[7] dated May 19, 1995. The said

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[3] Par. 2, The Facts, Joint Stipulation of Consolidated Facts and Issues (JSCFI), docket, p. 185.
[4] The predecessors-in-interest of petitioner were Vulcan Industrial and Mineral Exploration Corporation (VIMEC) and Sulu Sea Oil Development Corporation (SSODC).
[5] Exhibit B.
[6] Exhibit C.
[7] Exhibit "O".

Coal Supply Agreement was amended in the years 2000, 2002, and 2007.

Petitioner had been selling coal to NPC for years without paying VAT pursuant to the exemption granted under Section 16 of PD No. 972, which provides for various incentives to COC operators, including tax exemptions as follows:

> "Section 16. Incentives to Operators. *The provisions of any law to the contrary notwithstanding*, a contract executed under this Decree may provide that the operator shall have the following incentives:
>
> a) *Exemption from all taxes except income tax*;
>
> b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts and materials required for the coal operations subject to the following conditions..." (Emphasis supplied)

The foregoing provision was in turn incorporated in the terms and conditions of the COC, [8] to wit:

[8] Exhibit "E".

> "Section V. Rights and Obligations of the Parties
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> ...
>
> 5.2. The OPERATOR shall have the following rights:
>
> a) *Exemption from all taxes (national and local) except income tax*[9]*..."* (Emphasis Supplied)

However, after Republic Act (RA) No. 9337 became effective on November 1, 2005, the NPC started to withhold a tax of five percent (5%) representing the final withholding VAT on coal billings of petitioner pursuant to Section 114(c) of RA No. 9337, on the belief that the sale of coal by petitioner was no longer exempt from VAT.[10]

In view thereof, petitioner requested for a BIR pronouncement sustaining its position that its sale of coal to NPC was still exempt from VAT, notwithstanding the cited amendatory law.

On March 7, 2007, respondent issued BIR Ruling No. 006-2007,[11] in favor of petitioner providing as follows:

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[9] Paragraph 7, Statement of Facts and the Case, Petition, Docket, pp. 3-4.
[10] Par. 2.13, Statement of Facts, Memorandum for the Petitioner, docket, p. 381.
[11] Exhibit I.

> *Be that as it may, since the tax exemption on the sale of coal products is premised on PD 972 which is a special law, and which Section 109(k) of the Tax Code, as amended so specifically provides to be the basis of the VAT exemption, the same shall apply to coal produced by SMC pursuant to the COC.* In short, the imposition of VAT on the transaction which burden may be passed on the seller of the product/services to its buyer is not the same with exempting the transaction itself from VAT, as contemplated under PD 972.
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> In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, *SMC's sales of coal produced by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109 (k) of the Tax Code, as amended by R.A. 9337, in relation to PD 972, as amended..."* (Emphasis supplied)

Consequently, on May 21, 2007, January 21, 2008, and January 29, 2008, petitioner filed letters with the BIR Large Taxpayers Division, Revenue District Office No. 121-Quezon City, attaching thereto all the supporting documents, requesting for a refund or the issuance of a TCC in the total amount of P77,253,245.39, representing the final withholding VAT on its coal billings for the period of July 1, 2006 to December 31, 2006.[12]

[12] Pars. 8 and 9, The Facts, JSCFI, docket, p. 186.

Due to respondent's alleged inaction,[13] petitioner filed on August 08, and November 10, 2008 the instant Petitions for Review respectively docketed as CTA Case Nos. 7822 and 7849.

Respondent counters in the Answers filed on September 3, 2008[14] and January 5, 2009,[15] that the claims for tax refund are still subject of administrative investigation and/or examination by respondent. Much more, petitioner is yet to prove that both the administrative and judicial claims for refund were seasonably filed in accordance with Section 112 (A) and (C) and 229 of the Tax Code, as amended and that all requisites of the law for entitlement have been complied with. Respondent also invokes the presumption that the collection and payment of taxes are in accordance with law, rules and regulations which presumption must be overturned by petitioner. Further, petitioner's exemption from VAT under R.A. 8424 has been deleted in Republic Act No. 9337 or the New Expanded Value-Added Tax[16]. That being the case, petitioner's sale or importation of coal and natural gas, in whatever form and state shall now be subject to VAT. In any event, claims for refund are strictly construed against

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[13] Par. 10, , The Facts, Joint Stipulation of Consolidated Facts and Issues (JSCFI), docket, p. 187.
[14] CTA Case No. 7822, docket, pp. 100-110.
[15] CTA Case No. 7849, docket, pp. 120-128.
[16] Section 109 paragraph (e) of the Tax Code, as amended.

petitioner-claimant for it is deemed an exemption from taxation and liberally in favor of the taxing authority. Anent, petitioner's claim that its tax exemption is under the mantle of constitutional protection against non-impairment of contract, respondent maintains that tax exemptions granted under a legislative franchise are subject to amendment, alteration and repeal by Congress when the common good requires.

After submission of pre-trial briefs, [17] the parties filed their Joint Stipulation of Facts and Issues on November 27, 2008,[18] which was approved in a Resolution dated December 2, 2008.[19]

On January 27, 2009, CTA Case Nos. 7822 and 7849 were consolidated considering that the parties as well as the facts of the two Petitions for Review are the same except for the period and the amount involved. [20]

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[17] Docket, pp. 121-128 and pp. 132-136.
[18] Docket, pp. 145-148.
[19] Docket, p. 149.
[20] Resolution dated January 27, 2009, CTA Case No. 7849, docket, p. 153.

On March 3, 2009, the parties submitted their Joint Stipulation of Consolidated Facts and Issues[21] which the Court approved on March 16, 2009.[22]

During the trial, the parties presented their respective pieces of evidence, both documentary and testimonial.

Petitioner formally offered Exhibits "A" to "DD-1" which were admitted in two separate Resolutions promulgated on November 20, 2009[23] and January 29, 2010.[24]

On the other hand, respondent, in open court, offered in evidence Exhibits "1" to "2-a" as well as the testimony of its lone witness Lydia A. Vito,[25] which were admitted by the Court [26]

On April 28, 2010,[27] the consolidated petitions were submitted for decision after the parties filed their respective memoranda.[28]

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[21] Docket, pp. 185-188.
[22] Docket, pp. 208-209.
[23] Docket, pp. 347-348.
[24] Docket, pp. 357-358.
[25] Minutes of the hearing held on February 25, 2010, docket, pp. 369-370.
[26] Docket, pp. 376-377.
[27] Resolution dated April 28, 2010, docket, p. 413.
[28] Docket, pp. 378-404; pp 405-411.

ISSUES

In their Joint Stipulation of Consolidated Facts and Issues,[29] the parties submitted the following for the resolution of the Court:

> "1. Whether or not petitioner is entitled to a tax refund in the amount of SEVENTY-SEVEN MILLION TWO HUNDRED FIFTY THREE THOUSAND TWO HUNDRED FORTY-FIVE AND THIRTY NINE CENTAVOS (P77,253,245.39) erroneously withheld by NPC for the period July 1, 2006 to December 30, 2006
>
> 2. Whether or not petitioner's claim for tax refund/credit was filed within the two-year (2) prescriptive period in accordance with Section 229 of the National Internal Revenue Code.
>
> 3. Whether or not the sale or importation of coal and natural gas, in whatever form or state, is still exempted from Value Added Tax in view of the provisions of Republic Act No. 9337 amending certain provisions of the Tax Code (R.A. No. 8424)."

THE RULING OF THE COURT

For the Court to rule on petitioner's alleged entitlement to a refund or TCC, it is primordial to look first into the timelines of filing the two Petitions for Review, for a discourse on the two other issues is

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[29] Docket, pp. 187.

inutile if after all, the petitions were filed beyond the prescribed two-year limit.

The key provisions, viz-a-viz, the timeliness of filing the two petitions, are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -
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> xxx xxx xxx
>
> (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."
>
> "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."

Clearly, the administrative and judicial remedies of filing a claim for refund of erroneously collected and/or paid tax must be availed of within two years from the payment of the tax.

On the other hand, Section 114(C) of the same Tax Code provides that the final withholding VAT must be remitted within ten (10) days following the end of the month the withholding was made, thus:

> "SEC. 114. *Return and Payment of Value-Added Tax.* –
>
> xxx xxx xxx

> (C) *Withholding of Value-added Tax.* - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided*, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.
>
> The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made."

Reckoned from August 10, 2006[30], September 8, 2006[31], October 10, 2006[32], November 10, 2006[33], December 11, 2006[34], and January 10, 2007[35], the dates when NPC remitted the final withholding VAT on its gross payments for coal purchases from petitioner for the period covering July to December 2006, petitioner had until August 10, 2008, September 8, 2008, October 10, 2008, November 10, 2008, December 10, 2008, and January 10, 2009, within which to file its

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[30] Exhibit "W-1-a".
[31] Exhibit "W-2-a".
[32] Exhibit "W-3-a".
[33] Exhibit "W-4-a".
[34] Exhibit "W-5-a".
[35] Exhibit "W-6-a".

claim both in the administrative and judicial levels. Evidently, the original administrative claim filed on May 21, 2007[36], the amended administrative claim filed on January 21, 2008[37], and the Petitions for Review filed on August 8, 2008[38] and November 10, 2008[39], were well within the two-year prescriptive period.

Anent the issue of whether petitioner's sale of coal to NPC is still exempt from VAT despite the provisions of Republic Act No. 9337 amending certain sections of the National Internal Revenue Code (NIRC) of 1997, the answer is in the affirmative.

The issue is not at all novel. In a number of cases involving the same parties and issue but covering different taxable periods and amounts, the Court had unequivocally ruled that petitioner is exempt from VAT pursuant to PD No. 972. This special law declares the Government's policy to accelerate the exploration, development, exploitation, production and utilization of the country's coal resources. Precisely the Philippine Government through Energy Development Board of then Ministry of Energy and petitioner's predecessor's-in-

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[36] Exhibits "J" and "K".
[37] Exhibits "L" and "M".
[38] CTA Case No. 7822, for the third quarter of 2006.
[39] CTA Case No. 7849, for the fourth quarter of 2006.

interest, viz., Vulcan Industrial and Mineral Exploration Corporation (VIMEC) and Sulu Sea Oil Development Corporation (SSODC) executed the COC to put flesh into this policy. To promote the project and encourage operators as well as investors, the law itself provided incentives such as tax exemptions expressly granted unto them by virtue of Section 16(a) thereof, which reads as follows:

> **"Presidential Decree No. 972**
> **Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal**
>
> **SEC. 16.** *Incentives to Operators.* The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives
>
> (a) *Exemption from all taxes except income tax*;
>
> (b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment to spare parts and materials required for the coal operations subject to the following conditions... (Emphasis supplied)"

This tax-exemption was expressly incorporated in Section 5.2 of the COC as follows:

> "Section V. Rights and Obligations of the Parties
>
> ......

> 5.2. The OPERATOR shall have the following rights:
>
> (a) *Exemption from all taxes (national and local) except income tax…*" (emphasis supplied)

Thus under the foregoing provisions, petitioner as a coal mine operator, is entitled to claim the incentive of exemption from all taxes, both national and local, other than income tax. Note, that under Section 21 of the NIRC of 1997, VAT is enumerated as one of the taxes, fees and charges deemed to be national taxes from which petitioner may claim exemption from paying. For ready reference, the provision is as follows:

> "Sec. 21. Sources of Revenue. – The following taxes, fees and charges are deemed to be national internal revenue taxes:
>
> (a) Income tax;
> (b) Estate and donor's tax;
> (c) *Value-added tax*;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue."

Therefore, except for income tax, petitioner may claim exemption from paying VAT on its transactions under the COC.

As to respondent's contention that the grant of exemption upon petitioner under R.A. 8424 has been removed when R.A. 9337 took effect in November 2005, suffice it to say that a change of heart on the part of the BIR does not appear. In fact, about two years from the effectivity of R.A. 9337, the BIR in its Ruling No. 006-2007[40] dated March 07, 2007 reiterated its stand that petitioner is exempt from VAT on its coal sales under the COC. The BIR relevantly states:

> *Be that as it may, since the tax exemption on the sale of coal products is premised on PD 972 which is a special law, and which Section 109(k) of the Tax Code, as amended so specifically provides to be the basis of the VAT exemption, the same shall apply to coal produced by SMC pursuant to the COC.* In short, the imposition of VAT on the transaction which burden may be passed on the seller of the product/services to its buyer is not the same with exempting the transaction itself from VAT, as contemplated under PD 972.
>
> In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, *SMC's sales of coal produced by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109 (k) of the Tax Code, as*

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[40] Exhibit I.

> *amended by R.A. 9337, in relation to PD 972, as amended..."* (Emphasis supplied)

Proceeding from the above discussion is the alleged repeal of the provisions pertinent to this case, which according to respondent effectively removed petitioner's exemption from VAT. The repealing clause of RA 9337, Section 24 pertinently states:

> "Sec. 24. Repealing Clause. - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
>
> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated [power by generation companies; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly."

Verily, there is no indication that RA 9337 repealed PD No. 972 or any section or paragraph thereof, whether express or implied. In a myriad of cases, the Highest Tribunal ruled that a special law - such as PD No. 972 - cannot be repealed, amended or altered by a subsequent general law by mere implication.[41] If the intent to repeal is not clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act.[42] The legislature is presumed to know the existing laws; if it intended a repeal of the earlier law, it should have so expressed that intention in the subsequent statute. Thus, a statute will not be deemed to have been impliedly repealed by another enacted subsequent thereto unless there is a showing that a plain, unavoidable and irreconcilable repugnancy exists between the two.[43] Absent an express repeal, as in this case, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws.[44] An express repeal, is one wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed. Absent this specific requirement, an express repeal may not be presumed.[45] Further, well-entrenched is the rule that an implied repeal is disfavored. The apparently conflicting provisions of a law or two laws should be harmonized as much as

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[41] Manzano vs. Valera, G.R. No. 122068, July 08, 1998.
[42] Social Justice Society vs. Atienza, Jr., G.R. No. 156052, February 13, 2008.
[43] Freedom from Debt Coalition vs. Energy Regulatory Commission, G.R. No. 161113, June 15, 2004.
[44] People v. Benipayo. G.R. No. 154473, April 24, 2009; Photokina Marketing v. Benipayo, G.R. No. 155573.
[45] Penera v. COMELEC, G.R. No. 181613, September 11, 2009.

possible, so that each shall be effective. For a law to operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act.[46]

There being no plain and irreconcilable repugnancy between the relevant provisions of the pertinent laws and considering that the repealing clause of R.A. No. 9337, specifically Section 24 thereof did not expressly include P.D. 972 in its enumeration of repealed laws or provisions, it is plain that the latter has not been repealed by R.A. No. 9337 and petitioner may still invoke in its favor VAT exemption under the COC.

Additionally, Section 109 (k) of RA 9337 provides that transactions which are exempt under special laws are also exempt from VAT, thus:

> "Sec. 109. *Exempt Transactions*. – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
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> xxx xxx xxx

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[46] *Maria Virginia V. Remo vs. The Honorable Secretary of Foreign Affairs*, G.R. No. 169202, March 5, 2010.

> (k) Transactions which are exempt under international agreements to which the Philippines is a signatory or *under special laws*, except those under Presidential Decree No. 529. (Emphasis supplied)

As early as 2009, this Court in *Semirara Mining Corporation vs. Commissioner of Internal Revenue,*[47] laid to rest the issue petitioner's exemption from VAT, in this fashion:

> "The inherent power of the state to impose taxes includes the power to grant tax exemptions. Tax exemptions may be granted either by the Constitution or by an act of legislature, subject to limitations as the Constitution may provide.
>
> The tax exemption being availed of by the petitioner is a tax exemption granted by an act of legislature, which is, P.D. No. 972. Under Section 16 of the said law, operators of coal operating contracts are given various incentives, which include exemption from all taxes except income tax. Furthermore, the said incentive or tax exemption provided for by P.D. 972 was embodied and incorporated in Section 5.2 of the Coal Operating Contract between petitioner and the Philippine Government. In the present case, the petitioner is seeking exemption from VAT. As provided under Section 21 of the 1997 Tax Code, VAT is one of the national internal revenue taxes, hence, exemption from VAT falls within the exemptions provided by P.D. 972 and its Coal Operating Contract. Furthermore, petitioner's claim for exemption from payment of the VAT is also covered by the 1997 Tax Code notwithstanding its amendment by R.A. 9337, as provided by Section 109 (K), which reads as follows

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[47] CTA Case No. 7717, October 13, 2009.

"REPUBLIC ACT NO. 9337
AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

SEC. 109. **Exempt Transactions.** — (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

xxx xxx xxx

(K) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529;

xxx xxx xxx"

Based on the aforequoted provision of Section 109, petitioner is entitled to exemption from VAT since its sale of coal is exempted from VAT as provided under a special law, which is PD 972.

In its last effort to prove that petitioner is not entitled to a tax refund or to be issued a tax credit certificate, respondent avers that the tax exemption under P.D. 972 has been effectively repealed by R.A. 9337, specifically by Section 24, which provides:

xxx xxx xxx

In the case at bar, there is no express repeal since as stated by the petitioner, there is no express mention of P.D. 972 in the Repealing clause of R.A. 9337. As ruled by the Supreme Court in the case of Mecano vs. Commission on Audit, it is settled that an express repeal is a

> declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number and title is repealed; all other repeals are implied repeals. Likewise, there cannot be an implied repeal since repeal of laws should be made clear and expressed. Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject; Furthermore, a law cannot be deemed repealed unless it is clearly manifest that the legislature so intended it. **Considering that the exemption of the petitioner from all taxes except income tax, as provided by P.D. 972, is not enumerated in Section 24 of R.A. 9337, the tax exemption of petitioner still subsists.**" (Emphasis supplied)

Undoubtedly, petitioner's claim for exemption from payment of VAT is also covered by the NIRC of 1997, notwithstanding its amendment by RA No. 9337.

On matter of substantiation, contrary to respondent's contention, petitioner submitted various documents in support of its claim that NPC erroneously withheld and remitted to the BIR the amount of P77,253,245.39 representing 5% final withholding VAT on NPC's gross payments for coal purchases from it for the period of July 01 to December 31, 2006.

Petitioner presented the following: (a) the Certificates of Final Tax Withheld at Source[48] (BIR Forms No. 2306) issued by the NPC to petitioner; (b) Monthly Remittance Returns of Value-added Tax and other Percentage Tax Withheld[49] (BIR Forms No. 1600) filed by the NPC with the BIR; (c) Revenue Official Receipts[50] (BIR Forms No. 2524); (d) Monthly Alphabetical Lists of Payees from whom Taxes were Withheld[51]; (e) NPC's Certifications[52] on the Amount of Final VAT Withheld by the NPC for petitioner's coal sales; (f) Summary of Comparison of VAT Withheld per NPC Certification against BIR Form No. 2306[53]; (g) Summary of VAT Withheld per BIR Form No. 2306 issued by the NPC[54]; (h) Comparison of VAT Withheld per NPC Certification against BIR Form No. 2306[55]; (i) Summary of Withholding VAT Remitted by the NPC[56]; (j) Summary of Comparison of VAT Withheld from petitioner per NPC Alphalist against BIR Form No. 2306[57]; (k) Comparison of VAT Withheld per NPC Alphalist against BIR

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[48] Exhibits "V-1-1" to "V-1-65", "V-2-1" to "V-2-47", "V-3-1" to "V-3-34", "V-4-1" to "V-4-44", "V-5-1" to "V-5-50", and "V-6-1' to "V-6-41".
[49] Exhibits "W-1" to "W-6".
[50] Exhibits "W-1-a" to "W-6-a".
[51] Exhibits "W-1-b" to 'W-6-b".
[52] Exhibits "F", "G", "H", "P", "Q", and "R" or "U-1" to "U-6".
[53] Exhibit "U".
[54] Exhibit "V"
[55] Exhibits "V-1" to "V-6".
[56] Exhibit "W".
[57] Exhibit "X".

Form No. 2306[58]; (l) Summary of Movement in petitioner's "Creditable Withholding Taxes" Account[59]; and (m) Summary of Comparison of VAT Withheld per BIR Form No. 2306 against petitioner's Books[60].

A scrutiny of the enumerated documents proves that the NPC indeed withheld a final withholding VAT in the amount of P77,253,245.39 on its gross payments for coal purchases from petitioner for the third and fourth quarters of 2006, which final withholding VAT was erroneously remitted by the NPC to the BIR. In fine, petitioner was able to substantiate its claim for refund.

There is also no merit to respondent's protestation that petitioner failed to submit all relevant documents in the administrative level rendering recourse to the Court premature on account of failure to exhaust administrative remedies.

In *Commissioner of Internal Revenue vs. Manila Mining Corporation*,[61] it was explained that documentary evidence presented before respondent in the administrative proceeding have no

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[58] Exhibits "X-1" to "X-6".
[59] Exhibit "Z".
[60] Exhibit "AA".
[61] G.R. No. 153204, August 31, 2005.

evidentiary value unless offered before this Court where the cases are litigated *de novo*, thus:

> Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.

A fortiori, it is incumbent upon petitioner to substantiate its claim for refund, regardless of the outcome of the proceeding before the administrative body, as it did before this Court.

All told, the instant petition is meritorious. Petitioner is exempt from VAT pursuant to Section 109(k) of the NIRC of 1997, as amended, in relation to Section 16 of P.D. No. 972. That being the case, respondent is under obligation to refund or issue a TCC in favor of petitioner in the amount of P77,253,245.39, in accordance with Sections 204 and 229 of the NIRC of 1997, as amended.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P77,253,245.39, representing the erroneously paid final VAT withheld by the National Power Corporation and remitted to the Bureau of Internal Revenue in connection with its sales of coal for the period covering July 1, 2006 to December 31, 2006.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
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 case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice