REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5634

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 04 2000

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DECISION

This is a petition for review filed by Petitioner TAGANITO MINING CORPORATION against respondent COMMISSIONER OF INTERNAL REVENUE for the failure of the latter to act on the former's claim for refund in the amount of P7,402,155.24 allegedly representing its Value-Added Tax (VAT) paid on its domestic purchases of goods and services for the period January 1 to December 31, 1996.

As represented, petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is 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. It is registered with the Bureau of Internal Revenue as a VAT taxpayer in accordance with Section 107 of the then National Internal Revenue Code and the applicable rules and regulations (Exh. D) and is also registered with the Board of

Investments (BOI) as a non-pioneer enterprise under BOI Certificate No. EP 88-306 (Exh. A).

For the period January 1, 1996 to December 31, 1996, petitioner alleges that it realized zero-rated sales amounting to TWO HUNDRED AND FORTY MILLION SEVENTY-ONE THOUSAND FIVE HUNDRED AND FOURTEEN PESOS (P240,071,514.00) which were paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

For the same period, petitioner made numerous domestic purchases and importations of goods and services, which were directly related to its mining operations, the alleged total of which is SEVENTY FOUR MILLION TWENTY ONE THOUSAND FIVE HUNDRED SIXTY SIX AND 26/100 PESOS (P74,021,566.26), and had paid VAT input taxes on said domestic purchases and importation of goods and services in the total amount of SEVEN MILLION FOUR HUNDRED TWO THOUSAND ONE HUNDRED AND FIFTY FIVE AND 24/100 PESOS (P7,402,155.24).

The aforesaid zero-rated export sales, domestic purchases and importations of taxable goods and services and VAT Input Taxes are summarized hereunder:

Period Covered	Zero-rated Export Sales	Domestic Purchases/ Importation of Taxable Goods/Services	VAT Input Taxes
01/01/96-03/31/96	P 33,650,734.50	P 5,139,933.10	P 513,993.31
04/01/96-06/30/96	40,811,068.29	6,563,068.86	656,306.86
07/01/96-09/30/96	79,706,054.65	9,713,030.70	971,303.07
10/01/96-12/31/96	85,903,657.00	52,605,533.60	5,260,552.00
TOTAL	P240,071,514.44	P74,021,566.26	P7,402,155.24

The corresponding VAT returns comprising the aforestated quarters were filed with and received by the respondent on the dates imprinted in the said returns (Exhs. E, F, G, H, I and J).

Petitioner asseverates that since the aforestated VAT Input taxes were all directly attributable to its zero-rated export sales and have not been applied to any VAT output tax liability during the period January 1, 1996 to December 31, 1996, or to any succeeding quarter or quarters of the taxable year 1996 (Exhs. L, M, N and O), and considering further that they are properly supported by sales invoices and/or official receipts issued by its suppliers (Exhs. V to V-2268), it is entitled to a refund of the aforementioned VAT input taxes in accordance with Section 106 (now 112) of the National Internal Revenue Code (NIRC).

Thus, on April 7, 1998, petitioner filed with respondent a written claim for refund of the aforesaid VAT input taxes in the amount of P7,402,155.24 (Exhs. P and P-1).

The same was not acted upon by respondent, hence, on April 17, 1998, petitioner filed with this Court the instant petition for review.

In his Answer filed on May 30, 1998, respondent interposes, in his special and affirmative defenses that: (1) the petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded were actually paid, (2) petitioner's claim for refund of alleged excess value added input taxes is yet subjected to and still under administrative investigation, (3) petitioner failed to show compliance to the provisions in 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, (5) claims for refund are construed strictly against claimants, the same being in the nature of exemption from taxes, and (6) one who claims to be exempt from the payment of a particular tax must do so under clean and unmistakable terms found in the statute which is not so in the instant case. Thus, respondent prays for the dismissal of the instant petition for lack of merit.

Taking into account CTA Circular No. 1-95, petitioner engaged the services of Mr. Leonardo Cuaresma, Jr. of the auditing firm, Punongbayan & Araullo, to verify and certify on the herein petitioner's claim for refund. Mr. Cuaresma recommended the disallowance of the amount of P187,118.48 due to non-compliance with invoicing requirements (Exh. U-5-a) and since the total VAT input taxes duly supported by sales invoice and/or official receipts per his verification totalled only P7,400,407.48 (Exh. U-4-a), he recommended the refund of the amount of P7,213,289.00.

The issue for resolution is whether or not petitioner is entitled to the refund of P7,213,289.00 allegedly representing its unutilized VAT input taxes for the year 1996.

Initially, it must be pointed out that petitioner has complied with the prescriptive period provided under Section 106 (now 112) in relation to Sections 110 (now 114) and 230 (now 229) of the Tax Code. It filed its administrative claim for refund with the respondent's Bureau on April 7, 1998 (Exh. P) and with this Court on April 17, 1998. Both dates fall within the two-year prescriptive period counting from April 18, 1996, the date when the first Quarterly VAT return of petitioner was filed with the respondent (Exh. E), hence, there is no question as to the timeliness of the instant petition.

The Court finds no obscurity in the language of Section 100(a)(1) [now 106 (A)(2)(a)] of the Tax Code, quoted below, that would pose an ambiguity in its application. The provision itself furnishes the best means of its own exposition that the export sales of a VAT registered person which are paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with existing rules and regulations of the BSP is not subject to 10% VAT but to a 0% VAT. In other words, evidence as to its registration as VAT entity and the actual export such as sales invoices, bank credit memoranda, export declarations and export permit are necessary to be considered zero-rated.

> **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) Export sales; and
>
> (2) x x x
>
> "Export Sales" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. "Foreign currency denominated sales", means sales to nonresidents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines.
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> x x x x x x x x x

Evidence on record shows that petitioner complied with the aforesaid requirement when it presented its VAT Registration Certificate (Exh. C) and the Export Sales Invoices, Bank Credit Memoranda, Bills of Lading and Export Declarations (Exhibits W, W-1 to W-49), hence, doubt as to the status of the petitioner as a zero-rated VAT enterprise is eliminated.

Moreover, Section 106(a) [now 112(A)] of the Tax Code, quoted hereunder, is explicit that the input tax attributable to the goods exported by a VAT-registered person is refundable/creditable to the exporter provided such has not been applied to any output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the rules and regulations of the BSP, thus, the right to claim refund of VAT input taxes by an exporter who is a VAT registered person is not dubious.

> **Section 106.** ***Refunds or tax credits of creditable input tax.*** – (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 100(a)(2)(A)(i),(ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> x x x x x x x x x

In the case at bar, since petitioner was able to show (1) that it is indeed a zero-rated VAT enterprise, (2) that its export sales for the taxable year 1996 were properly supported by sales invoices, Bank Credit Memos, Bills of Lading and Export Declarations (Exhs. W, W-1 to W-9), (3) that it received the total amount of

P235,971,179.74 as inward remittance/payment of its importers of its products during the year 1996 (Exhs. W-2, W-7, W-12, W-18, W-23, W-29, W-34, W-40 and W-46), (4) that it did not carry over the input taxes of the taxable year 1996 to the quarters of 1997 (Exhs. L, M, N and O), (5) that said input taxes have not been applied to any VAT output tax, (6) that the said input taxes are properly supported by sales invoices and/or official receipts issued by petitioner's suppliers, as certified by the Auditing Firm, Punongbayan & Araullo (Exhs. U, V to V-2268), and considering that respondent did not submit any documentary evidence to support its case on the ground that the records of the case have not been forwarded to him (TSN, July 20, 1999) and considering further the uncontroverted evidence of the petitioner, the Court was persuaded to grant the relief sought by petitioner but in a lesser amount due to an additional disallowance by the Court of P183,716.57 again on reasons of violations of invoicing requirements, the details and the breakdown of which are stated below:

REASON FOR THE DISALLOWANCE	PER INDEPENDENT CPA'S VERIFICATION	PER COURT'S VERIFICATION	TOTAL
(1) Non-vat sales invoices/official receipts	P 10,526.24	P 48,157.45	P 58,683.69
(2) Purchases with no supporting documents	166,219.15	13,491.59	179,710.74
(3) Sales invoices/official receipts not in the name of Taganito Mining Co.	8,400.09	3,632.32	12,032.41
(4) Sales invoices/official receipts not within the period of claim	307.50		307.50
(5) Recorded twice	665.50		665.50
(6) Sales invoices/official receipts with Handwritten TIN		8,434.92	8,434.92
(7) Sales invoices/ official receipts without TIN or "V" / VAT after TIN		108,287.38	108,287.38
(8) Official receipts without BIR Permit		1,712.91	1,712.91

(9) Overstated Input tax					
(a) Per summary	P1,395,607.00				
Per sales invoices/ official receipts	1,394,607.00	1,000.00			1,000.00
	TOTAL	P 187,118.48		P 183,716.57	P 372,582.81

(see Annex A)

Accordingly, the total allowable input taxes that should be granted to petitioner as a refund or as tax credit should only be P7,029,572.43, computed as follows:

AMOUNT OF CLAIM			P7,402,155.24
LESS: DISALLOWANCES			
(a) Discrepancy of input taxes claimed			
Amount appearing in the Petition for Review and VAT returns	P7,402,155.24		
Input taxes per petitioner's summary (Exh. U-4-a)	7,400,407.48	P 1,747.76	
(b) Per Independent CPA (Exh. U-5-a)		187,118.48	
(c) Per Court's verification (Annex A)		183,716.57	P 372,582.81
AMOUNT REFUNDABLE			P7,029,572.43

IN THE LIGHT OF ALL THE FOREGOING, respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a TAX CREDIT CERTIFICATE in favor of herein petitioner in the amount of P7,029,572.43 representing the latter's VAT input taxes for the taxable year 1996. No pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above 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

TAGANITO MINING CORPORATION VS. CIR
CTA CASE NO. 5634
SCHEDULE OF COURT'S DISALLOWANCES ON
CLAIMED EXCESS INPUT TAXES **ANNEX A**
FOR THE PERIOD JANUARY 01, 1996 TO DECEMBER 31, 1996

(1) SALES INVOICES/OFFICIAL RECEIPTS WITH HANDWRITTEN TIN

SUPPLIER	EXHIBIT	REFERENCE		INVOICE AMOUNT		INPUT VAT
GEN. PARTS SUPPLY NEW & SECONDHAND	V2033	353		21,780.00		1,980.00
	V2034	362		5,530.03		502.73
	V2035	1125		15,794.02		1,435.82
	V2121	1123		7,260.00		660.00
	V2123	371		14,520.00		1,320.00
	V2122	370		26,000.04		2,363.64
	V2238	375		1,900.03		172.73
SUBTOTAL			P	**92,784.12**	P	**8,434.92**

(2) SALES INVOICES/OFFICIAL RECEIPTS WITHOUT TIN OR "V"/"VAT" AFTER TIN

SUPPLIER	EXHIBIT	REFERENCE		INVOICE AMOUNT		INPUT VAT
ASIAN SHIPPING CORPORATION	V53	4780		831,875.00		75,625.00
VOCOM ENTERPRISES	V1244	213		4,499.99		409.09
	V1244	212		27,000.05		2,454.55
	V1373	214		21,199.97		1,927.27
	V1723	002		163,999.99		14,909.09
TONG YAK GROCERY & GEN. MDSE	V108/109	2471		8,400.04		763.64
	V462/463	2485		22,499.95		2,045.45
	V464/465	2486		8,400.04		763.64
	V523/524	2499		13,049.96		1,186.36
TO SUY HARDWARE	V311	71814		502.04		45.64
FJT MARKETING & GEN.MDSE.	V1314	362		7,260.00		660.00
	V1417	1544		8,960.05		814.55
	V1544	1501		18,322.04		1,665.64
GEN. PARTS SUPPLY NEW & SECONDHAND	V2236	1126		24,232.01		2,202.91
	V2237	379		16,110.05		1,464.55
	V2238	380		14,850.00		1,350.00
SUBTOTAL			P	**1,191,161.18**	P	**108,287.38**

(3) PURCHASES WITHOUT SUPPORTING DOCUMENTS

SUPPLIER	EXHIBIT	REFERENCE		INVOICE AMOUNT		INPUT VAT
PILIPINAS SHELL PETROLEUM CORP.				2,020.59		183.69
MONARCK EQUIPMENT CORP.				146,386.90		13,307.90
SUBTOTAL			**P**	**148,407.49**	**P**	**13,491.59**

(4) NON-VAT SALES INVOICES/OFFICIAL RECEIPTS

SUPPLIER	EXHIBIT	REFERENCE		INVOICE AMOUNT		INPUT VAT
K-3 CENTER POINT	V811	9553		276.98		25.18
	V811	9552		2,006.95		182.45
	V811	9551		3,289.55		299.05
	V812	9593		1,320.00		120.00
	V812	9696		1,397.99		127.09
	V812	9697		176.77		16.07
	V812	9792		859.98		78.18
	V813	9926		545.71		49.61
VOCOM ENTERPRISES	V2037	004		163,999.99		14,909.09
	V2037	005		5,757.95		523.45
	V2038	006		4,100.03		372.73
	V2038	007		346,000.05		31,454.55
SUBTOTAL			**P**	**529,731.95**	**P**	**48,157.45**

(5) SALES INVOICES/OFFICIAL RECEIPTS NOT IN THE NAME OF TAGANITO MINING CORPORATION

SUPPLIER	EXHIBIT	REFERENCE		INVOICE AMOUNT		INPUT VAT
RCPI	V915	824346		39.16		3.56
	V1028	820843		11.00		1.00
	V1029	838954		34.54		3.14
PRESTIGE JEWELRY CENTER	V1119	49261		771.98		70.18
MERCURY DRUG CORP.	V1357	111223		76.45		6.95
PALMA TRADE CENTER	V1362	20349		110.00		10.00
HI-TECH HEARING CENTRE INC.	V1371	0524		36,000.03		3,272.73
E.C. NICKEL DRUG	V1726	321589		497.64		45.24
SURIGAO LKS MERCANTILE, INC.	V1724	29437		398.97		36.27
	V1725	27637		246.95		22.45
	V1725	27903		73.81		6.71
PATES ENTERPRISES	V1734	1111		825.00		75.00
	V1734	1150		869.99		79.09
SUBTOTAL			**P**	**39,955.52**	**P**	**3,632.32**

(6) OFFICIAL RECEIPTS WITHOUT BIR PERMIT

SUPPLIER	EXHIBIT	REFERENCE		INVOICE AMOUNT		INPUT VAT
FJT MARKETING & GEN.MDSE.	V1656	886		1,900.03		172.73
FJ MARKETING	V1908	1559		10,890.00		990.00
	V1909	1560		6,051.98		550.18
SUBTOTAL			P	**18,842.01**	P	**1,712.91**
TOTAL			P	**2,020,882.27**	P	**183,716.57**