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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5205

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 13 1997

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DECISION

This case involves a claim for refund in the amount of P7,907,662.53, allegedly representing value-added tax paid on domestic purchases of taxable goods and services for the first quarter of 1993.

The factual backdrop of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, whose main product, copper concentrates, are all for export.

It registered as a VAT entity and was issued VAT Registration Certificate No. 32-0-004622 effective August 15, 1990 (Exh. "L").

For the first quarter of 1993, petitioner's export sales totalled P642,685,032.24 (Exh. "C"), the proceeds of which were received in acceptable foreign currency and inwardly remitted in accordance with Central Bank regulations. For the same period, petitioner paid P7,907,662.53 for input taxes, as follows:

Local	P7,117,222.53
Importation	790,440.00
Total	P7,907,662.53

A VAT Return for the first quarter of 1993 was filed with the BIR on April 20, 1993 and subsequently, an amended return was likewise filed (Exhibits "A" and "B").

On September 20, 1993, petitioner applied for the issuance of tax credit certificate/refund pursuant to Section 106(b) of the Tax Code for VAT paid for the first quarter of 1993 in the amount of P7,907,662.53 (Exh. "C"), representing the input taxes not applied against any output VAT.

To forestall the running of the prescriptive period under Section 230 of the Tax Code, the instant petition was filed on February 22, 1995.

Respondent, in her Answer, dated May 24, 1995, set up the following special and affirmative defenses:

> 4. That in an action for refund the taxpayer has the burden of proof to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 5. Claims for refund are construed strictly against the taxpayer. Taxpayer-petitioner has no cause of action.

The sole issue to be resolved is whether or not petitioner is entitled to the claim for refund or issuance of a Tax Credit Certificate in the amount of P7,907,662.53, representing input taxes paid for the first quarter of 1993.

Petitioner, in support of its claim, offered the following documentary evidence:

a. VAT Return for the first quarter of 1993 (Exh. "A");

b. Amended VAT Return for the first quarter of 1993 (Exh. "B");

c. Application for Tax Credit/Refund of Value Added-Tax Paid (Exh. "C");

d. Listings of VAT invoices and receipts (Exhs. "E", "E-1" to "E-43");

e. Photocopy of PRC ID of Lorna Tomampo, CPA (Exh. "F");

f. Letter from Lorna Tomampo dated February 5, 1996 addressed to the Board of Directors of petitioner (Exh. "G");

g. Certification issued by Hongkong and Shanghai Banking Corp., Ltd. (Exh. "H");

h. Certification issued by Asian Bank (Exh. "J");

i. Certification issued by Far East Bank and Trust Company (Exh. "K"); and

j. VAT Registration Certificate (Exh. "L").

Respondent, on her part, not only failed to present any controverting evidence but likewise failed to file a memorandum.

Thus, this Court is left with no recourse but to decide the case solely on the basis of the evidence presented by herein petitioner. However, We find said evidence insufficient to warrant a grant of the claim for refund.

Under Section 245 of the Tax Code, "(t)he Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code." In the case of Eslao v. Commission on Audit, G.R. No. 108310, September 1, 1994, 236 SCRA 161, these "administrative regulations and policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great respect." One of these rules and regulations is Revenue Regulations No. 3-88, issued to implement the VAT Law, and which lists down the documents to be attached in refunds or tax credits of input taxes in export sales.

> "A photocopy of the purchase invoice or receipt evidencing the value-added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:
>
> "1. *Export Sales*

> "i) Photo copy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.
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> "ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.
>
> "2. *Zero-rated sale of services.*
>
> xxx xxx xxx xxx
>
> Under subparagraph 1 (ii) xxx, the statement shall show the amount in foreign currency of the export proceeds or consideration and the date of inward remittance, **conversion rate into Philippine currency and the total peso value thereof.**" (Emphasis supplied)

It is to be observed that the word "shall" was used by the aforequoted regulations, which implies that the requirements laid down by these regulations are mandatory, failing in any of which would prove fatal to one's case.

After examining the evidence presented by herein petitioner, this Court noted that petitioner failed to submit photocopies of export documents, invoices or receipts evidencing the sale of goods, as well as the names of the persons to whom the goods were delivered. Further, the certification issued by the Hongkong and

Shanghai Banking Corp., Ltd. did not indicate the conversion rate into Philippine currency and the total peso value thereof. Consequently, for failure to submit these vital documents, the Court could not ascertain the veracity of the contents indicated in petitioner's VAT return as export sales.

"Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed _strictissimi juris_ against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Reagan v. Commissioner, 30 SCRA 968; Asturias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617; Davao Light and Power Co. Inc. v. Commissioner of Customs, 44 SCRA 122). Thus, when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well founded doubt is fatal to the claim (Farrington v. Tennessee & Country Shelby, 95 U.S. 679, 686; Manila Electric Co. v. Vera, L-

29987, Oct. 22, 1975; Manila Electric Co. v. Tabios, L-23847, Oct. 22, 1975, 67 SCRA 351).

WHEREFORE, in the light of all the foregoing, petitioner's claim for issuance of tax credit certificate or refund of value-added taxes for the first quarter of 1993 is hereby **DENIED** for insufficiency of evidence. No pronouncement as to costs.

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 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
Court of Tax Appeals