REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5058

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:
NOV 06 1998

x - x

DECISION

This petition for review is asking for the issuance of a tax credit certificate for unutilized input value-added tax (VAT) attributable to zero-rated export sales pursuant to Section 106(a) of the 1992 Tax Code in the amounts of P53,106,992.79 for the period February 1, 1992 to April 30, 1992 and P35,814,270.47 for the period May 1, 1992 to July 31, 1992.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the mining business which includes, the exploration, development and operation of mining properties for purposes of commercial production, and in marketing mine products produced by it. It is registered with the Bureau of Internal Revenue (BIR) as a VAT registered person with VAT Registration Certificate No. 31-9-000027, dated January 1, 1988 (Exh. A).

On May 4, 1988, petitioner was able to secure from the BIR an approval for zero-rating with respect to its export sales of mine products (Exhs. B, B-1, B-2, and B-3).

For taxable quarters ended April 30, 1992 and July 31, 1992, petitioner seasonably filed its VAT returns reflecting, among others, the alleged excess input VAT credits as follows:

	Exh.	Amount	Date Filed With the BIR
For the quarter ended April 30, 1992	C	P52,724,329.41	May 20, 1992
For the quarter ended July 31, 1992	D	35,987,749.04	Aug. 20, 1992
T o t a l		P88,712,078.45	

On two separate occasions, petitioner filed Applications for Tax Credit/Refund of Value-Added Tax Paid with the BIR anchoring its entitlement on Section 106(a) of the Tax Code, as implemented by Section 16 of Revenue Regulations No. 5-87. The first application which covers the period February to April 1992 was filed on February 19, 1993 (Exhs. E, E-1 to E-4)) and the second application which covers the period May to July 1992 was filed on September 13, 1993 (Exhs. F, F-1 to F-4) in the respective amounts of P53,106,992.79 and P35,814,270.47.[1]

---

[1]These amounts differ from the excess input VAT credits reflected in petitioner's corresponding quarterly VAT returns.

After waiting for more than sixty (60) days for the respondent to act on said claims as ruled under Section 106(e) of the Tax Code, petitioner was compelled to file on January 14, 1994 the instant petition for review in order to preserve its right to judicially claim for the refund of excess input VAT payments.

During the proceedings of this case, respondent processed, approved and issued two tax credit certificates in the amounts of ₱38,665,851.55 for the period February to April 1992 (Exh. L) and ₱27,522,340.54 for the period May to July 1992. Furthermore, the amounts of ₱3,759,158.87 for the period February to April 1992 and ₱5,025,765.16 for the period May to July 1992, representing valid input taxes on importations, were also processed and approved but the authority to issue tax credit certificates were indorsed to the Commissioner of Bureau of Customs pursuant to the memorandum agreement executed by and between the Bureau of Internal Revenue and the Bureau of Customs (BOC). The rest of the claims were denied for the following reasons:

1. Input VAT applied to the alleged output tax liability on sale of gold to CB	
- Feb. to Apr. 1992	P 7,447,272.13
- May to July 1992	9,306.34
2. Non-compliance with VAT invoicing requirements	
- Feb. to Apr. 1992	3,234,710.24
- May to July 1992	3,256,858.43
T O T A L	₱13,948,147.14

Meanwhile, on May 9, 1997, petitioner filed a "Motion for Leave to Amend Petition So As To Implead Additional Parties" in an effort to join the Commissioner of Customs as party respondent to the case on the theory of incumbent respondent Commissioner of Internal Revenue that she cannot be obliged to issue tax credit certificates on the approved input VAT refund on importations in view of the aforementioned memorandum of agreement.

In a Resolution, dated June 3, 1997, the said motion was granted and the amended petition was deemed admitted. The Court then ordered the respondents, Commissioner of Internal Revenue and the Commissioner of Customs, to file their respective answers on the amended petition for review.

On June 30, 1997, while the respondent Commissioner of Internal Revenue filed her Amended Answer, the respondents Commissioner of Customs and Bureau of Customs2 failed to file their Answer, hence were declared by the Court in default, per Resolution dated September 1, 1997.

The trial on the merits then continued sans the representation from the respondent Commissioner of Customs.

---

[2] should just be "Commissioner of Customs" (Rule 5, Section 1, Rules of the Court of Tax Appeals).

In sum, what remains to be the issue is the refund of the balance of P14,441,141.24 for the period February to April 1992 and the sum of P8,291,929.93 for the period May to July 1992, detailed as follows:

Particulars	For the Period 02-01-92 to 04-30-92	For the Period 05-01-92 to 07-31-92
Processed and approved but indorsed to BOC	P 3,759,158.87	P5,025,765.16
Input tax applied on the alleged output tax liability on sale of gold to CB	7,447,272.13	9,306.34
Non-compliance with VAT invoicing requirements	3,234,710.24	3,256,858.43
T o t a l	P14,441,141.24	P8,291,929.93

Is petitioner entitled for further issuance of tax credit certificates in the above-mentioned amounts?

We shall tackle each item individually.

Input taxes which have been processed and approved but indorsed to BOC for issuance of tax credit certificates:

There is no doubt that the invoices and official receipts pertaining to input taxes in question were already examined by both the revenue examiner and the independent CPAs, hence, their findings can be relied upon for the final adjudication of the instant case.

We agree with the respondent Commissioner of Internal Revenue that petitioner is entitled to the amounts of P3,759,158.87 for the period February 1, 1992 to April 30, 1992 and P5,025,765.16 for the period May 1, 1992 to July 31, 1992, representing input VAT on importations and it is incumbent upon the respondent Commissioner of Customs to issue the corresponding tax credit certificates for these amounts.

Input taxes applied against output tax liability on sales of gold to CB:

The revenue examiner in disallowing the input taxes in the total amount of P7,456,578.47 for the period February 1, 1992 to July 31, 1992 opined that sales of mine products to the Central Bank are not considered export sales and therefore subject to 10% VAT. In arriving at such conclusion, respondent relied on VAT Ruling No. 008-92 issued on January 23, 1992, which classified the sales of gold to Central Bank as local sales subject to 10% value-added tax and further opined that a retroactive application of said VAT ruling will not cause prejudice to the petitioner.

After reviewing the pleadings of both parties, We find the issue of retroactive application of VAT Ruling No. 008-92 already settled in the cases of **Manila Mining Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 38287, dated June 5, 1997 and Atlas Consolidated Mining & Development Corporation vs. Court of Tax Appeals and Commissioner of Internal Revenue, CA G.R. SP No. 34152, dated February 6, 1998**, where it was ruled that "*VAT Ruling No. 008-92, in imposing VAT on sales of* copper concentrates to PASAR, pyrite to PHILPHOS and *gold to the Central Bank lacks legal bases, hence of no effect*".

The aforementioned pronouncement of the Court of Appeals is clear that VAT Ruling No. 008-92 is bereft of legal basis and therefore ineffective, hence, petitioner is entitled to the issuance of a tax credit certificate in the total amount of P7,456,578.47 for the period February 1, 1992 to July 31, 1992, representing output taxes on sales of gold to Central Bank.

Disallowed input taxes due to non-compliance with VAT invoicing requirements:

In order to dispute the disallowances made by the respondent, petitioner presented as evidence various invoices and official receipts[2]. However, verification of these documents together with that of the certification of independent auditors[3] and the report of the revenue examiner[4] disclose a situation where the exceptions made by the independent auditors are greater than that of the revenue examiner, to wit:

Particulars	For the Period 02-01-92 to 04-30-92	For the Period 05-01-92 to 07-31-92
Per revenue examiner's		

[3]Exhs. P-1 to P-15A, P-16A, P-17B, P-17C, P-18B, P-18C, P-19B to P-26B, F-26F to F-27C, P-28A, P-28B, P-28D to P-30C, P-30E to P-36F, and P-36I to P-44T.

[4]Exhs. J and O.

[5]Exhs. G and Q.

investigation	P3,234,710.24	P3,256,858.13
Per independent CPA report		
- purchases of goods and services without supporting invoices and/or ORs	P2,550,243.17	P3,416,871.93
- importation without supporting documents	8,097.00	
- purchases of goods and services not supported by original invoices and/or ORs	1,909,450.24	
Total	P4,467,790.41	P3,416,871.93

Given this scenario, this Court is inclined to give more credence to the findings of the independent CPA rather than that of the revenue examiner, pursuant to Section 26 of Rule 130 of the Rules of Court, which states that:

> **SEC. 26. *Admissions of a party.*** - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

Therefore in this particular aspect, petitioner is not entitled to a refund of input taxes, rather a deduction from the previously ruled allowable refund is in order.

In summary, petitioner is now entitled to the following input VAT refund:

Particulars	For the Period 02-01-92 to 04-30-92	For the Period 05-01-92 to 07-31-92	Total
Processed and approved but indorsed to BOC	P 3,759,158.87	P5,025,765.16	P8,784,924.03
Less:			
- importation without			

supporting documents	8,097.00		8,097.00
Total	₱ 3,751,061.87	₱5,025,765.16	₱8,776,827.03
Input tax applied on the alleged output tax liability on sale of gold to CB	₱ 7,447,272.13	₱ 9,306.34	₱7,456,578.47
Less:			
- discrepancy in the findings arrived at by the revenue examiner and the independent CPA	1,224,983.17	160,013.80	1,384,996.97
Total	₱ 6,222,288.96	(₱ 150,707.46)	₱6,071,581.50

WHEREFORE, in view of the foregoing, the petition for review is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Customs is **ORDERED** to **ISSUE** a tax credit certificate in favor of the petitioner the sum of ₱8,776,827.03, representing input VAT on importation for the period February 1, 1992 to July 31, 1992. Likewise, respondent Commissioner of Internal Revenue is **ORDERED** to **ISSUE** another tax credit certificate in the sum of ₱6,071,581.50, representing input VAT on purchases of domestic goods and services for the same period.

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 this 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