**REPUBLIC OF THE PHILIPPINES**
# COURT OF TAX APPEALS
**QUEZON CITY**
***EN BANC***

ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION,
Petitioner,

-versus-

C.T.A. EB No. 49
(C.T.A. Case No. 5296)

Present:

*Acosta, P.J.*
*Castañeda, Jr.*
*Bautista,*
*Uy,*
*Casanova, and*
*Palanca-Enriquez, JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 17 2005

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## *DECISION*

***BAUTISTA, J.:***

This is a Petition for Review which seeks the review of the Decision of the Court of Tax Appeals, sitting as a Division, promulgated on July 16, 2004 and the Resolution dated November 5, 2004, both denying petitioner's claim for refund.

The facts are undisputed.

Petitioner is a corporation duly organized and existing by virtue of the laws of the Philippines and primarily engaged in the business of mining, milling and marketing of mineral products such as copper, gold and its by-products.

It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) enterprise with Certificate of Registration No. 32-004622. As an exporter of copper, it likewise obtained an approved application for VAT zero-rating on all its sales.

For the period July to September of the taxable year 1993, petitioner filed its VAT Return and duly paid taxes thereon which allegedly covered its export sales of copper concentrates and gold productions to Mitsubishi Materials Corporation of Japan, Marc Rich and Company and Centrotrade Minerals and Metals based in Switzerland.

On October 6, 1995, petitioner filed a claim for refund or the issuance of a tax credit certificate with the BIR for the VAT payments made covering the third quarter of 1993 in the amount of P7,076,520.27. On October 20, 1995, unable to receive a reply from the BIR, petitioner through a Petition for Review elevated its case before the Court of Tax Appeals, sitting as a Division. For failure to file his Answer within the prescribed period, respondent was declared in default by the Court's Division. A Decision was rendered by the Division on October 2, 1997 denying petitioner's claim for refund on the ground of prescription. Consequently, petitioner filed a Motion for Reconsideration on October 23, 1997. In a Resolution dated July 20, 1998, the Division partially granted petitioner's motion and modified its decision with respect to the issue of prescription. Nevertheless, petitioner's claim for refund was denied on the ground of insufficiency of evidence, for failure to present the export documents, the most crucial document required under Revenue Regulations No. 3-88.

On August 24, 1998, petitioner filed, through registered mail, a Petition for Review before the Court of Appeals. On November 28, 2000, a decision was rendered by the Court of Appeals remanding the case to this Court's Division for further proceedings, dispositive portion reads as follows:

> "WHEREFORE, the petition is hereby GRANTED in part. The CTA is ordered to conduct further proceedings in CTA Case No. 5296 with dispatch to **enable petitioner Atlas to present in evidence the necessary export documents required by Revenue Regulations No. 3-88**.
>
> SO ORDERED."
> (Emphasis supplied)

After several hearings, petitioner filed a Supplemental Offer of Evidence on June 25, 2002. Thereafter, petitioner filed on December 5, 2002, a Motion for Leave of Court to Re-Open the Case and Allow the Presentation of Additional Evidence, attaching therewith various photocopies of export invoices, which petitioner failed to present before its offer of supplemental evidence.

A decision was rendered by the Court's Division on July 16, 2004, denying petitioner's claim for refund for failure to present the necessary export documents. Petitioner, thereafter, filed a Motion for Reconsideration which was likewise denied by the Division in a Resolution dated November 5, 2004 and received by petitioner on November 17, 2004.

On December 2, 2004, petitioner filed with the Court *En Banc* a Motion for Extension of Time to File Petition for Review seeking an extension of fifteen (15) days or until December 17, 2004 within which to file its Petition for Review.

On December 17, 2004, petitioner filed before the Court En Banc the instant Petition for Review raising the following assignment of errors:

1. The 2nd Division of the Court of Tax Appeals erred in denying the claim for refund considering that Petitioner's sales of goods to Mitsubishi Materials Corporation, Marc Rich Company and Centrotrade Minerals and Metals for the period July to September 1993 are all zero-rated for VAT purposes.

2. The Honorable 2nd Division of the Court of Tax Appeals erred in totally disregarding the Independent Certified Public Accountant's report in arriving at the assailed Decision and Resolution denying petitioner's claim for refund.

The petition is not meritorious.

On the first assigned error, petitioner asserts that its sale of goods to Mitsubishi Materials Corporation, Marc Rich Company, and Centrotrade Minerals and Metals, all non-resident foreign corporations, are considered as export sales, and thus, subject to zero percent VAT.

Petitioner's claim is based on Section 106(2)(a) of the National Internal Revenue Code (NIRC), as amended, which provides:

"SEC. 106. Value-added Tax on Sale of Goods or Properties.-
xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:

(a) Export Sales.- The term 'export sales' means:

(1) The sale and actual shipment 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 <u>and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)</u>. (Emphasis Supplied)

Furthermore, petitioner's sale of goods to the aforementioned non-resident foreign corporations qualify as export sales pursuant to Section 4.100-2(a) of Revenue Regulations No. 7-95, to wit:

"SEC. 4.100-2. Zero-rated sales. A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.

The following sales by VAT registered persons shall be subject to 0%:

(a) Export sales

"Export Sales" shall mean:

(1) The sale and actual shipment 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 paid for in acceptable foreign currency or its equivalent in goods or services and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

xxx xxx xxx"

From the foregoing provisions of law and the implementing regulations, the sales made by petitioner to the non-resident foreign corporations qualify as export sales subject to zero percent VAT.

However, in order to be entitled to the refund of excess or unutilized input taxes, the claimant must comply with the following requirements[1]:

1. Both the administrative and the judicial claim for a tax credit or refund was filed within two (2) years from filing of the quarterly VAT return(s) covered by the claim as provided under Section 4.106-2(c) of Revenue Regulations No. 7-95 in relation to Section 112(D) of the Tax Code;

2. The claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding periods;

3. The claimed input VAT payments are directly attributable to zero-rated sales; and

4. The claimed input VAT payments are duly supported by VAT invoice or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Section 113 and 237 of Tax Code.

As correctly found by the Division, the first three requirements have been complied with by the petitioner. However, petitioner's claim for refund was denied due to insufficiency of evidence.

Petitioner submits that it has complied with the substantiation requirements provided in Section 4.104-5 of Revenue Regulations No. 7-95

[1] Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5760 and 5902, February 5, 2002 cited in Rio Tuba Nickel Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6293, February 3, 2004.

which provides:

> "Sec. 4.104-5. Substantiation of claims for input tax credit.- (a) input taxes shall be allowed only if the domestic purchases of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code. x x x"

To support its claim, and prove the amount of excess or unutilized input VAT, petitioner presented various documents, among others, export documents, bills of lading, inward remittances and the Report of the Independent Certified Public Accountant (CPA), Ms. Lorna S. Santos-Tomampo, who certified that the summary lists as well as the sales invoices and bills of lading are all original copies and that the total input VAT reflected therein remained unutilized since it was not credited against its output VAT liabilities in the succeeding quarter/quarters.

Moreover, petitioner argues that the documentary evidence such as export declarations and bills of lading which contain the name of the exporter, the foreign buyer, the port and date of loading, the port and date of departure, the carrier, the country of origin, the port and country of discharge, the country of final destination, cost of insurance, cost of freight, total number of packages, gross weight of the items and the unit price, among others, are direct proof of export.

Furthermore, petitioner avers that an invoice may be one of those documents that may prove the sale but it is not the only conclusive evidence of the fact of export.

Petitioner believes that since it has submitted as part of its evidence the bills of lading and export declarations of its export sales for the third quarter and also the bank certifications of inward remittance of foreign currency corresponding to these export sales, it has sufficiently established its export sales.

We do not agree.

While petitioner was able to present documents such as the bills of lading, export declarations and bank certifications of inward remittances, these are insufficient to prove the exportation of goods. Petitioner must have submitted the corresponding export invoices or receipts. All these documents taken collectively are the best means to prove the exportation of goods. The Court of Appeals held, and we quote:

> "By and large, export sales invoices alone are inadequate proofs that the subject goods were actually exported. Such invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value of prices and charges annexed (Philippine Law Dictionary, 3rd Ed., p. 495). By no means are they accurate confirmations that goods were actually shipped out of the country. Yet, that is what the law requires. Section 100(a)(2) of the National Internal Revenue Code (then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and shipment 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. In that case, it is imperative for any claimant of a tax refund or credit in relation to the Input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country.

Rather than limiting the documentary requirements to just export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills, and export declarations or permits. These documents, taken collectively, are the best means to prove the exportation of goods."[2]

The Court's Division correctly held in the assailed decision:

"Petitioner submitted and offered in evidence the Report of the Independent Certified Public Accountant, Ms. Lorna Tomampo, together with copies of the bills of lading, export declarations, and certificates of origin which were utilized by the said Independent CPA in support of her report, to properly substantiate its claim. However, **after a close scrutiny, this court noticed that no invoice or receipt evidencing the sale of goods, as well as the name of the person to whom the goods were delivered, were offered in evidence by herein petitioner. It is observed that when petitioner filed its Motion for Leave of Court to Re-open the Case and Allow the Presentation of Additional Evidence, it was aware that it had been remiss in presenting the crucial export documents as ordered by the Court of Appeals. Likewise, petitioner admitted that it had realized the fatal omission only after the submission of its Supplemental Formal Offer of Evidence** (CTA Records, page 175). These export invoices, marked as Annexes "A" to "V" were attached to the said motion. However, **these very same documents, though photocopies were attached to petitioner's motion, were not formally offered during the trial. As a result, these documents do not have any probative value in this case.** It bears emphasis that this court has time and again ruled that, pursuant to Section 34 of Rule 132 of the Revised Rules of court, evidence not formally offered is of no value and cannot be considered by the courts (PBC Capital Investment Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6068, May 23, 2002) *(Emphasis supplied)*

Therefore, failure to present in evidence petitioner's invoices or receipts evidencing the sale of goods is fatal to its claim for refund.

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[2] Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001

On the second assigned error, petitioner avers that the Court's Division failed to consider the Independent CPA's Report. The invoices, export declarations and bills of lading were among the documents examined, evaluated and audited by the commissioned independent CPA and that the sales invoices were made an integral part of the examination from which the CPA Report, which was submitted to the Division, was based. Such that the submission of the sales invoices to the court is not a condition *sine qua non* to prove the existence of export sales.

We are not convinced by petitioner's averments.

Considering that the sales invoices were made an integral part of the Independent CPA's examination, the submission of the CPA Report, however, will not suffice to prove the existence of the export sales. The presentation in evidence of the necessary sales invoices is imperative to give the Court the opportunity to determine the veracity of the CPA Report. The importance of the presentation of the sales invoices in spite of the submission of the CPA Report was aptly explained in the assailed Resolution, portion of which reads as follows:

> "x x x It is worth stressing that under CTA Circular 1-95, as amended, the **"voluminous" documents supporting the claim for refund, should have been pre-marked and submitted to the court after the independent auditor shall have examined and compared them with the originals. Without these pre-marked documents, the court cannot verify the correctness of the independent auditor's conclusion.** In the case of Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6367, February 16, 1998, this court had ruled that:

> "x x x Petitioner inadvertently assumed that a mere listing of cash slips even if certified to have been previously examined by an independent Certified Public Accountant would suffice to establish the truthfulness and accuracy of the contents thereof.
>
> CTA Circular 10-97 amending the provisions of CTA Circular 1-95 clearly provides that:
>
> "2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payments to be introduced in evidence must be premarked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. x x x"
>
> The foregoing provisions of Circular 10-97 does not permit the petitioner to present a CPA Certification and Summary Listings Documents alone without submitting the voluminous photocopies of the cash slips before Us. The said Circular merely aims to avoid the time-consuming procedure of presenting, identifying and marking each document before this Court or Commissioner Clerk of Court, thus, encouraging speedy administration of justice."

In the light of the foregoing, the Court *En Banc* finds no reversible error to warrant the reversal of the assailed Decision and Resolution dated July 16, 2004 and November 5, 2004, respectively. Accordingly, the instant

Petition for Review is hereby **DENIED** and the assailed Decision and Resolution are **AFFIRMED** *in toto.*

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Resolution has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

**ERNESTO D. ACOSTA**
Presiding Justice