REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5392

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 30 1998

x - x

DECISION

This is a judicial claim for the issuance of a tax credit certificate in the amount of ₱25,311,256.61 allegedly representing unutilized or excess input value-added tax credits for the quarters ended September and December, 1994.

Petitioner is a domestic corporation located at Benguet Centre Building, No. 12 ADB Avenue, Mandaluyong City. It is engaged in the mining business and is registered with respondent's Bureau as a Value-Added Tax ("VAT", for brevity) entity per VAT Registration No. 31-9-000027. As such, it has an approved application for zero-rating of its sales of mine products.

For the above-stated period in 1994, petitioner filed its quarterly VAT returns showing an excess input tax credit of ₱10,328,382.70 and ₱15,025,183.97 for the third and fourth quarters, respectively.

On August 31, 1995 and October 12, 1995, petitioner filed before the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance the corresponding applications for tax credit of said input taxes paid covering the period July to September, 1994 and October to December, 1994.

Due to the inaction of the respondent, petitioner filed the instant petition for review on June 28, 1996 in order to suspend the running of the two-year prescriptive period provided in Section 230 of the Tax Code.

At bar, petitioner reasserts its alleged entitlement to the amount of excess input VAT credits it has accumulated for the third and fourth quarters of 1994. Respondent, on the other hand, merely interposed in her answer, by way of special and affirmative defenses, that petitioner has no cause of action. In addition, respondent raised the other defense, albeit under a wrong premise, that the taxpayer-petitioner has the burden of proof of showing that the "assessment" was not validly issued. It must be noted that herein petition seeks the issuance of a tax credit and does not in any manner involve an issue on the decision of the respondent on a protested assessment.

Records show that petitioner presented exhibits for marking and identification by its witnesses. Sadly, however, it has failed to formally offer the same before this Court or even include them in the docket of this case as required under Section 34, Rule 132 of the Rules of Court.

Even the exception to above rule as enunciated in the case of **Vda. de Oñate vs. Court of Appeals, 250 SCRA 283**, is not applicable herein where evidence not formally offered may be admitted and considered by the trial court provided the following requisites are present, *viz*: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case. As stated earlier, no invoices or receipts evidencing input VAT payments were incorporated in the records of this case.

In view of this situation, this Court is constrained to deny petitioner's claim on the ground of insufficiency of evidence, there being no convincing documents, most especially invoices or receipts, supporting said claim.

Lastly, it must be stressed time and again that claims for the refund or tax credit of taxes are in the nature of tax exemption and being so, they are construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. (**Insular Lumber Company vs. Court of Tax Appeals and Commissioner of Internal**

Revenue, G.R. No. L-31057, May 29, 1981; Commissioner of Internal Revenue vs. Court of Tax Appeals and Insular Lumber Company, G.R. No. L-31137, May 29, 1981; 104 SCRA 710; and Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and The Court of Tax Appeals, G.R. Nos. L-83583-84, March 25, 1992, 207 SCRA 549).

In the case entitled **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459,** the Supreme Court categorically ruled, thus:

> "In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer." (Underscoring supplied)

In **Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332,** the Supreme Court similarly ruled in this manner:

> "x x x there can be no disagreement with petitioner's stance that private respondent has the burden of proof to establish the factual basis of its claim for tax refund."

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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