REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION
Petitioner,

- versus -

C.T.A. CASE NO. 5253

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 27 1998

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DECISION

This petition is seeking for the issuance of tax credit certificate or refund of the amount of P5,998,839.42 alleged to be excess input taxes for the second quarter of 1993.

The facts of the case are simple.

Petitioner is a mining corporation duly organized and existing by virtue of the laws of the Philippines. It is also registered with the Bureau of Internal Revenue as a VAT taxpayer with VAT Registration Certificate No. 32-0-004622 (Exhibit "A"). Its main product, copper concentrates, are all for export, thus, it is classified as a zero-rated VAT taxpayer under Section 100 of the Tax Code.

On July 20, 1993, petitioner filed its VAT return for the second quarter of 1993 (Exhibit "D"). Thereafter, petitioner filed an amended VAT return on July 29, 1994 reflecting the following input tax payments:

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Domestic Purchases of goods and services	P5,813,219.42
Importation of goods	185,620.00
Total Input Taxes Paid	P5,998,839.42

Subsequently, petitioner filed an application for the issuance of tax credit certificate/refund pursuant to Section 106(b) of the Tax Code for VAT paid for the second quarter of 1993 in the amount of P5,998,839.42 (Exhibit "D-3").

Considering that the two-year prescriptive period under Section 230 of the Tax Code is about to expire, petitioner filed the instant petition on May 17, 1995.

Respondent in her Answer to the Petition for Review maintained the following special and affirmative defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

> 6. In an action for refund, the taxpayer has the burden of proving that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 7. In claims for tax refunds, the laws/rules are strictly construed against the taxpayer . Taxpayer/petitioner has no cause of action.

During the hearing held on October 27, 1995, petitioner presented as evidence the testimony of Mr. Ramon Abella, Section Manager of the VAT Division of the petitioner, who identified the documentary evidence submitted by the petitioner. Then on May 2, 1996, petitioner presented Ms. Isabel Espeño who testified that all export sales covered under the period invoiced herein were submitted inwardly to the banks, producing various bank certifications to that

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effect. To further bolster its claim, petitioner formally offered the following documentary evidence:

1. VAT Registration Certificate (Exh. "A");
2. VAT Return for the second quarter of 1993 (Exh. "D");
3. Amended VAT Return for the second quarter of 1993 (Exh. "D-1);
4. Computation of Tax Credit/Refund (Exh. "D-2);
5. Application for VAT Refund (Exh. "D-3);
6. Listing of VAT invoices and receipts (Exhs. "E" to "E-54");
7. Photocopy of PRC Identification Card of petitioner's CPA, Ms. Lorna Tomampo (Exh. "F");
8. Letter, dated February 5, 1996, to establish that an independent CPA analyzed the VAT documents of the petitioner (Exhs. "G" to "G-2-b");
9. Certification of Hongkong and Shanghai Banking Corporation (Exh. "I" to "I-3");
10. Certification issued by Asian Bank (Exh. "J"); and
11. Certification issued by Far East Bank & Trust Co. (Exh. "K").

Respondent, on the other hand, failed to present any evidence and to file a memorandum in support of her case.

The issue presented before Us is whether or not petitioner is entitled to the issuance of tax credit certificate or tax refund of excess input VAT payments for the second quarter of 1993 amounting to P5,998,839.42.

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We hold against the petitioner.

Section 2 (c)(1) of Revenue Regulations No. 3-88 specifically enumerates the requirements for the issuance of tax credit certificate or tax refund of input taxes previously paid by a zero-rated taxpayer engaged in sale of goods for export, to quote:

> "(c) Claims for tax credits/refunds. - Application For Tax Credit/Refund of Value Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> 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) photocopy 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 photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.
>
> 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."

In the case at bar, petitioner substantially failed to comply with the aforementioned requirements when it opted not to submit the purchase invoices or receipts evidencing the value-added taxes paid and the export documents

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showing the date and destination of the goods exported. With respect to the foreign currency denominated sale, petitioner also failed to submit in Court the photocopies of invoices or receipts evidencing the sale of the goods as well as the name of person or persons to whom the goods were delivered.

Aside from the fact that non-compliance by the petitioner with the provisions of Section 2 (c)(1) of Revenue Regulations No. 3-88 is fatal to its claim for tax credit/refund, We also find that the unavailability of the said documentary evidence prevented Us from confirming the veracity of the amount claimed by the petitioner as excess input VAT payments. Mere listing of VAT invoices and receipts, even if certified to have been previously examined by an independent certified public accountant, would not suffice to establish the truthfulness and accuracy of the contents thereof unless offered and actually verified by this Court itself.

WHEREFORE, in view of all the foregoing, petitioner's claim for issuance of tax credit certificate or refund is hereby **DENIED** due to insufficiency of evidence. No pronouncements as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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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
Court of Tax Appeals

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