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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO 5191

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Promulgated:
AUG 13 1997

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# DECISION

This case involves a claim for tax credit of value added tax (VAT) input taxes paid during the period February to June 1993 in the total amount of ₱30,587,727.14.

Petitioner is a domestic registered corporation engaged in mining business which includes the exploration, development, and operation of mining properties for purposes of commercial production, and the marketing of marketable mine products produced by it.

It is a VAT registered taxpayer with VAT Registration No. 31-9-000027 (Exh. "A", Pet.; p. 7, CTA rec.). It applied for VAT zero rate on its sale of goods to persons or entities which are effectively zero rated and its application was approved on May 04, 1988 (p. 8, CTA rec.).

For the period February 1, 1993 to March 31, 1993, petitioner filed its VAT return (Exh. "B", Pet.; p. 10, CTA rec.), declaring therein the following data:

1. VAT Sales in the total amount of P439,602,147.23 consisting of zero-rated sales amounting to P424,881,912.83 and 10% rated sales with a value of P14,720,234.40;

2. VAT Output Tax in the amount of P1,472,023.44;

3. VAT Input Tax in the total sum of P57,212,878.30, breakdown of which is as follows:

| | | |
|---|---|---|
| a. | Carried over from previous quarter | P42,209,914.30 |
| b. | Imposed on domestic purchases of goods/services | 12,412,470.00 |
| c. | Imposed on importation of goods | 2,590,494.00 |
| | | P57,212,878.30 |

As the VAT output tax was only in the amount of P1,472,023.44, there was an excess VAT credit amounting to P55,740,854.86, which was carried over to the succeeding quarter.

For the period April to June 1993, petitioner also filed its VAT return (Exh. "B-1", Pet.; p. 11, CTA rec.) showing the following entries:

1. VAT Sales in the total amount of P400,837,210.70 which is comprised of P383,834,009.00 worth of zero rated sales and P17,003,201.70 value of 10% rated sales;

2. VAT Output Tax in the amount of P1,700,320.17;

3. VAT Input Tax in the sum of P75,393,430.70, details of which are as follows:

| | | |
|---|---|---|
| a. | Carried over from previous quarter | P55,740,854.86 |
| b. | Imposed on domestic purchases of goods/services | 14,721,228.84 |
| c. | Imposed on importation of goods | 4,931,347.00 |
| | | P75,393,430.70 |

Again, as the VAT output tax was only in the amount of P1,700,320.17, there was an excess VAT credit in the sum of P73,693,110.53. This amount became the subject of separate claims for refund/tax credit filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance and Petitions for Review filed with this Court. Thus:

| Amount of Claim | CTA Case No. |
|---|---|
| P23,224,040.80 | 5133 |
| 18,855,121.79 | 5167 |
| 12,682,819.02 and | |
| 17,904,908.12 | 5191 |
| P72,666,969.73 | |

The last two amounts mentioned above are the subject of the instant petition.

The claim for the first amount of P12,682,819.02 pertaining to the period February to March 1993 was administratively filed with, and received by, the Department of Finance on October 10, 1994 (Exh. "C", Pet.; pp. 12-13, CTA rec.).

The claim for the second amount of P17,904,908.12 corresponding to the period April to June 1993, was filed with and received by, the Department of Finance on November 14, 1994 (Exh. "D", Pet.; pp. 15-16, CTA rec.).

As the claims were not acted upon in the administrative level, petitioner lodged them in this Court on January 27, 1995 in order to suspend the running of the two-year prescriptive period for claiming a refund or tax credit.

On April 21, 1995, respondent filed her Answer (pp. 25-26, CTA rec.) stating, among others, her usual special and affirmative defenses, to wit:

> "8) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 9) Claims for tax refunds are strictly construed against the taxpayer. Taxpayer-petitioner has no cause of action."

While the case was pending trial before this Court, in a Manifestation dated August 13, 1996 (pp. 89-90, CTA rec.), petitioner stated that respondent has issued in its favor a Tax Credit Certificate (No. S N 006073) in the amount of P12,897,478.76. However, as this amount represents only a portion of P30,587,727.14 which is the total amount of its claim for tax credit involved in this case, it will still pursue the instant case for the appropriate litigation of the balance pertaining to the disallowed input VAT in the amount of P17,690,248.38.

The lone issue, therefore, needing ventilation in this case is whether or not petitioner is entitled to a tax credit of the remaining balance in the amount of P17,690,248.38.

After a careful perusal of all the documents/exhibits presented and submitted, the Court finds only that the sum of P15,921,941.88 corresponding to input taxes should be validly refunded to petitioner. The computation of which is as follows:

| | 1993 | | |
|---|---|---|---|
| | Feb. to Mar. | Apr. to June | Total |
| Amount originally claimed | ₱12,682,819.02 | ₱17,904,908.12 | ₱30,587,727.14 |
| Less exceptions made by the independent CPA (Exh. E) | | | |
| a. purchases not supported by proper documents | ₱ 207,111.59 | ₱ 102,465.34 | ₱ 309,576.93 |
| b. purchases not supported by original documents | 59,174.40 | 42,360.91 | 101,535.31 |
| c. purchases of services supported only by provisional receipts | 56,821.71 | 125,714.13 | 182,535.84 |
| d. purchases of goods & services supported by non-VAT invoices/official receipts | 276,557.36 | 291,267.66 | 567,825.02 |
| e. purchases of goods & services supported by invoices/official receipts not in the name of the company | 387.36 | 40,507.50 | 40,894.86 |
| f. purchases supported by invoices/official receipts without printer's BIR permit | 4,178.58 | 31,047.60 | 35,226.18 |
| g. wrong tax base used (portion of contract price not supported by VAT official receipt) | 14,996.55 | 515,715.81 | 530,712.36 |
| Total | ₱ 619,227.55 | ₱ 1,149,078.95 | ₱ 1,768,306.50 |
| Allowable refund of input taxes | ₱12,063,591.47 | ₱16,755,829.17 | ₱28,819,420.64 |
| Less TCC issued by the BIR (SN 006073) | | | 12,897,478.76 |
| AMOUNT REFUNDABABLE | | | ₱15,921,941.88 |

The claim for refund was seasonably filed within the reglementary period of two years pursuant to Section 106(b) of the Tax Code.

**WHEREFORE**, based on the abovementioned computation, the Court **GRANTS** only the amount of ₱15,921,941.88 and hereby **ORDERS** respondent to **ISSUE** a tax credit certificate in such amount in favor of petitioner as input taxes for the period February to June 1993.

**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 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