REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5486

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 06 1999

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DECISION

This is a petition seeking for the refund of input value-added tax paid by Petitioner on its domestic purchases of taxable goods and services in the amount of ₱1,692,597.80 for the period January 1, 1995 to December 31, 1995.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores and was granted BIR Permit No. 0057-MP-90 (Exh. H) to engage in said business on June 22, 1990 by the Bureau of Internal Revenue.

Petitioner is registered as a value-added tax entity under VAT Registration No. 32A-0-003939 effective January 1, 1988 (Exh. I). It is likewise registered with the Board of Investments as a non-pioneer enterprise and was issued Certificate of Registration No. EP 88-306 on April 14, 1988 (Exh. G).

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For the period January 1, 1995 to December 31, 1995, Petitioner's zero-rated export sales totalled ₱225,007,085.47, which were paid for in foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines. Also, during the same period, Petitioner paid VAT input taxes on its domestic purchases of taxable goods and services amounting to ₱1,692,597.80, detailed as follows:

Period Covered	Zero-rated Export Sales	Domestic Purchases of Taxable Goods/Services	Vat Input Taxes
01/01/95-03/31/95	₱ 25,091,544.94	₱ 3,194,854.68	₱ 319,485.48
04/01/95-06/30/95	58,923,266.62	4,275,781.00	427,578.10
07/01/95-09/30/95	44,242,910.81	5,860,813.90	586,081.39
10/01/95-12/31/95	96,749,363.10	3,594,528.87	359,452.83
TOTAL	₱225,007,085.47	₱16,925,978.45	₱1,692,597.80

On November 12, 1996, citing Section 106(a) of the National Internal Revenue Code, in relation to Section 100(a)(2)(A)(i) of the same Code, to wit:

Section 106. ***Refunds or tax credits of input tax.***

(a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided*, however, That in the case of zero-rated sales under Section 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely

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attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Section 100. ***Value-added tax on sale of goods or properties***. - (a) *Rate and base of tax.* - x x x

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

(A) **Export sales**. - The term `export sales' means:

(i) 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 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).

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Petitioner filed with the BIR a letter-claim for the refund of the amount of ₱1,692,597.80, allegedly representing the VAT input tax directly attributable to its zero-rated export sales and which have not been applied to any VAT output tax liability for the same period (Exh. Z).

As there was no action on the part of herein Respondent and the two-year prescriptive period for the filing of a judicial claim for refund was about to lapse, petitioner filed the instant petition on April 7, 1997.

Respondent, in his Answer, claimed by way of Special and Affirmative Defenses that:

4. Petitioner's claim for tax credit/refund is still undergoing administrative investigation/examination by respondent's bureau;

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5. Taxes paid and collected are deemed to have been made in accordance with law and pertinent existing BIR regulations;

6. Claims for tax refund/credit are construed strictly against the claimants thereof as they are in the nature of exemption from payment of tax. Hence, it is incumbent upon herein petitioner to prove that it is entitled thereto;

7. In an action for tax credit/refund, the burden is upon the taxpayer to establish its right thereto, and failure to sustain this burden is fatal to said claim (Surigao Consolidated Mining Co. vs. CIR, 9 SCRA 728-734 [1963]);

8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230, both of the Tax Code as amended.

That Petitioner is a VAT-registered person whose sales are zero-rated is uncontroverted. Petitioner presented its VAT Registration Certificate (Exh. I) and the Export Declarations (With Foreign Exchange Proceeds) issued by the Central Bank of the Philippines to prove its export sales for the period covered (Exhs. N, O, P, Q, R, S, T, U). Thus, under Section 106(a) of the Tax Code, hereinbefore cited, Petitioner may apply for the refund of the input tax paid attributable to such sales, to the extent that such input tax has not been applied against its output tax.

The sole issue We are tasked to resolve, therefore, is whether or not Petitioner was able to substantiate its claim for refund amounting to ₱1,692,597.80.

We find for the Petitioner.

Section 15 of the Revenue Regulations No. 5-87 which took effect on January 1, 1988 provides:

> "**Sec. 15.** ***Substantiation of claims for input tax credits***. - (a) *In general.* - Input taxes shall be allowed only if the domestic purchase

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of goods or services is made in the course of his trade or business and supported by an invoice or receipt showing the information as required in Sections 108(a) and 238. A cash register machine tape issued to a VAT-registered buyer, although it indicates the VAT registration number of the seller, does not constitute valid proof or substantiation of tax credits."

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Upon the other hand, Sections 108(a) and 238 of the Tax Code provide:

"**Section 108.** ***Invoicing and accounting requirements for VAT-registered persons.*** - (a) *Invoicing requirements.* - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 238, the following information shall be indicated in the invoice or receipt:

(1) The VAT registration number.

(2) If the seller bills the tax as a separate item in the invoice:

(A) The amount of gross selling price or gross receipts on which the value-added tax is based;

(B) The amount of value-added tax determined by multiplying the amount of gross selling price or gross receipts by the rate of tax; and

(C) The sum of (i) the gross selling price or gross receipts and (ii) the value-added tax which the purchases pays or is obligated to pay to the vendor.

(3) If the seller elects not to bill the tax as a separate item in the invoice or receipt the total amount charged against the buyer."

"**Section 238.** ***Issuance of receipts or sales or commercial invoices***. - All persons, subject to an internal revenue tax shall for each sale or transfer of merchandise or for services rendered valued at ₱25 or more, issue receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; Provided, however, That in the case of sales, receipts or transfers in the amount of ₱100 or

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more, or, regardless of amount, where the sale or transfer is made by persons subject to value-added tax to other persons also subject to value-added tax; or, where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client. The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of 3 years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this section."

After an examination of the evidence presented by Petitioner, the Court finds that the latter was able to substantiate its claim for input tax by submitting the receipts and invoices evidencing its domestic purchases of goods and services and which receipts and invoices showed the information required by the aforestated sections.

Moreover, the Summary of Monthly Purchases prepared by Petitioner tallied with the findings of Punongbayan and Araullo, the auditing firm engaged by Petitioner and commissioned by the Court to verify and vouch the veracity and authenticity of the documents. According to the report submitted by the auditing firm, "no matters came to our attention that caused us to believe that the summary of value-added tax paid should be adjusted." Respondent, on his part, was considered to have waived his right to present evidence in view of the repeated absences of his counsel (p. 152, CTA records). He also failed to file his memorandum within the period given by the Court.

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In view, however, of the difference in the amount of the claim in the instant petition (₱1,692,597.80) with the amount of input tax appearing in the Summary of Monthly Purchases (Exh. B) which is ₱1,690,971.85, We are constrained to grant only the latter amount as the same was duly supported by receipts and invoices and was certified by Punongbayan and Araullo as properly recorded in its books.

WHEREFORE, in the light of the foregoing, Respondent is hereby **ORDERED** to **REFUND** in favor of Petitioner, the amount of ₱1,690,971.85, representing input value-added tax paid by Petitioner on its domestic purchases of goods and services for the period January 1, 1995 to December 31, 1995.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
RAMON O. DE VEYRA
Associate 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

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