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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. Case No. 4627

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 23 1995

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DECISION

This is a petition for review initiated by petitioner, Benguet Corporation, to seek from respondent tax credit for alleged input VAT credits for the periods August 1, 1989 to October 31, 1989 and from November 1, 1989 to January 31, 1990 in the total amount of P19,218,738.44.

Petitioner is a domestic corporation existing under and by virtue of Philippine Laws engaged in the mining business which include the exploration, development and operation of mining properties for purposes of commercial production and marketing of its marketable mine products.

Petitioner alleged in its petition filed on June 28, 1991 that it is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) payer with VAT registration No. 31-9-000027. Consequently, it applied from the BIR for Zero Rate pursuant to Sections 100(2) and 102(3) of the National Internal Revenue Code (NIRC) for sale of goods which was approved on May 4, 1983.

Petitioner further alleged that it filed its VAT return on November 20, 1989 covering the period August 1, 1989 to October 31, 1989 with a balance of P17,437,933.18 as creditable input tax. And for the period November 1, 1989 to January 31, 1990, petitioner filed its VAT return on February 20, 1990 claiming a balance of P11,780,805.26 as creditable input tax.

Pursuant to Section 106 of the NIRC and Section 15 of Revenue Regulation No. 5-87, petitioner allegedly filed with the BIR's VAT Division separate applications for tax credit of input taxes summarized as follows:

Period Covered	**Amount Applied For**	**Date Filed**
8/1/89 to 10/31/89	P 7,437,933.18	10/11/90
11/1/89 to 1/31/90	11,780,805.26	3/11/91
	P 19,218,738.44	

Petitioner asserts that it has complied with all the requirements in its application for tax credit by submitting to the BIR's VAT Division all the necessary documents, but, respondent failed to act on petitioner's claim until the filing of this petition for review. Petitioner therefore prays for judgement against respondent in favor of tax credit certificates for VAT credits covering the periods in question and such other reliefs and remedies just and equitable in the premises.

Respondent specifically denied in her Answer all the allegations in the petition, except for paragraph one, either for lack of knowledge and information to form a belief as to the truth thereof or that the petition contained mere opinions and unfounded conclusions of fact and or law, the truth being that which has been stated in the Special and Affirmative Defenses set forth.

As Special and Affirmative Defenses, respondent averred that Petitioner has failed to state any cause of action under Section 204 of the Tax Code under which the Commissioner of Internal Revenue allegedly may credit or refund taxes erroneously or illegally received. Respondent contends that petitioner failed to prove that the collection of the aforesaid tax liability in the amount of P19,218,738.44 is illegal and erroneous. There is the legal presumption that the collection thereof is lawful and regular.

Well-settled is the rule that provisions on tax refund is construed strictly against the taxpayer as they are in the nature of tax exemption. In an action for refund, the taxpayer has the burden to show that taxes were erroneously or illegally paid and failure on his part to do so is fatal to the action for refund.

Respondent also sought the dismissal of this case for lack of merit because the case is still under investigation.

During the trial of this case, petitioner introduced as its evidence the testimony of Mr. Edwin Ramos Abella, Technical Assistant to the Commissioner of Internal Revenue. Petitioner through counsel offered the testimony of his witness, Mr. Abella, to prove that previously he was with the VAT Division of the Bureau of Internal Revenue; that one of his assignments as Revenue Examiner for the VAT Division of the BIR is to examine, investigate all claims for refund of value-added tax payments filed by various corporations; that he was assigned to investigate the subject claim for refund of petitioner for the previous third and fourth quarters of 1989; and, that he made the necessary investigation and already made a recommendation which was approved by the Bureau of Internal Revenue." (p. 6, TSN, hearing of November 9, 1993)

Mr. Abella testified that prior to his present assignment, he was an examiner of the Banks, Financing and Insurance Division as well as in the Intelligence Division. That as such examiner, he was authorized to investigate Benguet Mining Corporation for the taxable years 1988 to 1989, more particularly its claim for VAT refund for the period August 1, 1989 to January 31, 1990. A memorandum/report, dated August 13, 1992, was prepared by witness Abella in collaboration with Lamentino D. Sicat, another Revenue Officer, which was reviewed by Ms. Evita M. Pantaleon, Section Chief (Exh. A, pp. 85-88, CTA records). Marked as petitioner's exhibit A-1 was a portion of the memorandum/report (page 3 thereof) which partly states that "Benguet shall not be allowed to claim zero-rated treatment on its sale of gold to the Central Bank contrary to BIR Ruling No. 036-90 pursuant to RMO NO. 22-92. The treatment of the sale of gold to the Central Bank was changed by virtue of VAT Ruling No. 008-92, dated January 23, 1992, declaring that the sale is a taxable transaction with a retroactive effect to January 1, 1988 . . ." Also marked as documentary evidence of petitioner was the worksheet of the Revenue Officers in the preparation of their report pertaining to the quarter of August to October 1989 (Exh. B) and the input tax on sale to CB in the amount of P9,106,400.05 (Exh. B-1) and the fourth quarter (November 1989 to January 1990) (Exh. C) with reference to input tax on sales to CB in the amount of P10,650,179.57 (Exh. C-1).

Aside from the testimony of Mr. Abella and the documents so marked as part of his testimony, no other evidence was introduced by petitioner. With the testimony therefore of its lone witness, Mr. Edwin Ramos

Abella, a BIR Officer, petitioner verbally offered in evidence exhibits "A", "A-1", "A-2", "B", "B-1", "C" and "C-1" which, as stated, are the Memorandum/Report of the Revenue Examiner and supporting working papers. Respondent interposed no objection to the admission of said exhibits and the Court resolved to admit all said exhibits of the petitioner subject to their final resolution.

During the hearing on April 13, 1994, respondent waived her presentation of evidence inasmuch as petitioner's lone witness is a BIR examiner and instead opted to submit her case for decision. Petitioner submitted a memorandum while Respondent failed to file a memorandum within the time given by the court.

Cases filed before this court are tried *de novo*. Cases elevated to this court are in the nature of an appeal from final decisions of two administrative agencies, namely: the Bureau of Internal Revenue and the Bureau of Customs. It reviews in its entirety the administrative proceedings/action taken by said agencies. The cases elevated before this court is opened entirely to judicial scrutiny and final determination. Thus, it would only be just and fair to give the parties equal opportunities to avail themselves of all the remedies under the law to defeat each other's claim. To determine therefore whether or not a taxpayer is entitled to a refund of the amount paid, it is important to ascertain how much the government is entitled to collect as taxes. This would necessarily include a determination of the correct amount of the taxpayer's liability, and certainly such ascertainment would constitute *res judicata* on both parties as to the matters involved. During the trial, the petitioner has the burden of proof with respect to its claim. It has the burden to prove material allegations in its petition as well as the truth of its claim. It has to produce evidence to prove its claim. All presumptions are in favor of the correctness of tax assessments/collections.

> *"In court cases the nature of the burden imposed upon a party charged with responsibility for a particular contested element is normally threefold: (1) the burden of pleading; (2) the burden of production as to the particular matter, referred to also as the burden of going forward; and (3) the burden of persuading the tries of fact of its existence. . ."* (Graham on Evidence, 1986 ed.)

Moreover, it has been consistently ruled that if a taxpayer fails to present evidence or sufficient proof to support the allegations in the petition for review conformably to the doctrine of presumption of correctness of tax assessment (Inter-provincial Auto-Bus Co., Inc. vs CIR, 98 Phil. 291. 291; Collector vs. Bohol Land Transportation Co., 107 PHil. 965) this Court will merely sustain the assessment against the taxpayer.

This observation becomes even more imperative in an action for refund, as in this case, where the taxpayer has the burden to show that the taxes were erroneously or illegally paid and failure to do so is fatal to the action for refund. Well-settled is the doctrine in taxation cases that provisions on tax refund are construed strictly against the taxpayers as they are in the nature of tax exemption. There is likewise the presumption that the collection of the tax is lawful and regular.

> *"Tax refund are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law . . . and cannot be permitted to exist upon vague implication.* (Asiatic Petroleum Co. vs Llanes, 49 Phil. 466; Northern Phil. Tobacco Corp. vs. Mun. of Agoo, La Union, 31 SCRA 304; Rogan vs. Commissioner, 30 SCRA 968; Asturias Sugar Central, Inc. vs. Commissioner of Customs, 29 SCRA 617; Davao Light & Power Co., Inc. vs. Commissioner of Customs, 29 SCRA 617; Davao Light & Power Co., Inc. vs. Commissioner of Customs, 44 SCRA 122). *Thus, when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim.* (Farrington vs Tenessee and County Shelby, 95 U.S. 679, 686; Manila Electric Co. vs. Vera, L-29987, October 22, 1975; Manila Electric co. vs Tabios, L-23847, October 22, 1975, 67 SCRA 451)."

As stated earlier, respondent specifically denied all the material allegations of petitioner's complaint, except for its corporate existence. It was therefore incumbent upon petitioner to show proof of each and every material allegation in its petition.

Petitioner failed to prove or offer in evidence that it is a VAT registered corporation; that it has an approved application for zero-rate on its sales of mining products (produced by it) with the Bureau of Internal Revenue; that for the periods covering August 1, 1989 to October 31, 1989, and November 1, 1989 to January 31, 1990, petitioner filed its VAT return.

No proof of input tax payments from August 1, 1989 to October 31, 1989 allegedly amounting to P21,971,175.85 on its local purchases of materials, supplies and capital goods on importations of materials and supplies and capital goods, and on purchases of services to reflect an alleged balance of P7,437,933.18 as creditable input tax were formally offered. No receipts, invoices or any other commercial document were introduced as evidence of input tax payments.

Furthermore, no evidence, testimonial or documentary, showed a VAT return for the period November 1, 1989 to January 31, 1990 allegedly indicating a total of P21,167,637.35 as input tax payments on its local purchases of materials and supplies and capital goods, or importation of materials and supplies and capital goods, and on purchases of services and an alleged balance of P11,780,805.26 as creditable input tax, subject of its claim. Again, no receipts, invoices or other commercial documents were presented to substantiate input tax payments to warrant its claim for refund.

No evidence was submitted by petitioner that it did file with respondent Bureau applications for tax credit of input taxes for the periods covered, that is, August 1 to October 31, 1989 and November 1, 1989 to January 31, 1990, and the action taken by the respondent Bureau.

What petitioner offered as its evidence was the testimony of a Revenue Officer with his Memorandum/Report recommending that petitioner shall not be allowed to claim zero-rated treatment on its sales of gold to the Central Bank. It is however noted that whatever may be the evidentiary value of said papers, this memorandum/report and related working papers (Exh. A, etc.) are merely recommendatory, subject to "final review and disposition by higher authorities." By no means can they be considered as the best evidence to support whatever claim petitioner may have in the present case. In this connection, it may be stressed that while Section 8 of Republic Act No. 1125 expressly provides that the proceedings of the Court of Tax Appeals need not be governed strictly by technical rules of evidence, the Court must on the other hand set a definite rule that only evidence presented and formally offered will be considered in the decision of a case.

What is at issue here is whether or not petitioner is entitled to the tax credits or refund prayed for. It failed to substantiate its claim or to show that the taxes already paid were illegal and the evidence which would entitle it to a tax credit/refund were not submitted. Respondent did not even present any evidence and she cannot be faulted for not doing so.

WHEREFORE, in view of the foregoing, the petition for review is hereby DISMISSED for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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