REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA MINING CORPORATION,
Petitioner,

- versus -

C.T.A CASE NO. 4860

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated : FEB 20 1995

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DECISION

This is a claim for refund in the amount of P4,795,135.85 representing excess input taxes allegedly paid by the petitioner for the third and fourth VAT taxable quarters of 1990.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines engaged in the exploration, development and operation of mineral products which includes the sale of these products to various clients. It is a VAT-registered entity with VAT registration No. 32-6-00632 covered by a VAT-registration certificate No. 00590. For purposes of payment of value-added taxes, said certificate provides the following VAT quarters, thus:

First Quarter	-	January 1 to March 31
Second Quarter	-	April 1 to June 30
Third Quarter	-	July 1, to September 30
Fourth Quarter	-	October 1 to December 31

To simplify the issues to be resolved in this case, petitioner filed a Request for Admissions on March 19, 1993 including therein pertinent matters related to its claim for refund. This Court in a Resolution dated May 25, 1993 considered all the allegations contained in said request to be admitted as respondent failed to present any objection or opposition thereto within the time given to her by this Court.

A synthesis of the allegations found in the pleadings submitted by both parties as well as those considered admitted by respondent results in the undisputed narration of facts.

On April 8, 1988, petitioner filed an application for zero-rating of its sale of gold to the Central Bank and this elicited a favorable response from the then Deputy Commissioner, Victor Deoferio, Jr.

On October 22, 1990, petitioner filed its VAT return for the third quarter of 1990 indicating therein a total creditable input tax balance of P2,520,394.64. Subsequently on January 21, 1991, petitioner filed its

VAT return for the fourth quarter of 1990 with a total creditable input tax balance of P2,397,643.11.

On September 1, 1992, petitioner filed an application for tax credit/refund of value-added tax with the VAT division of the BIR submitting therewith the necessary documents to support its claim.

Respondent did not act on this application for tax refund/credit and the reason for this was clearly enunciated in her Answer which contains the following special and affirmative Defenses, thus:

SPECIAL AND AFFIRMATIVE DEFENSES

> 4. The claim for Tax Credit/Refund of Value Added Tax Paid is premature. The Bureau of Internal Revenue (BIR) has still to conduct the necessary administrative investigations;
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> 5. The claim for Tax Credit/Refund of Value Added Tax Paid, by virtue of a letter dated October 10, 1988 confirming the sales of gold and silver to the Central Bank by a VAT-registered person are considered export sales subject to VAT at zero-rate, is not properly documented;
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> 6. The total amount of Value-Added Tax Paid was collected in accordance with law;
>
> 7. Claims for refund of taxes are construed against the claimant, the same being in the nature of an exemption from taxation (**Meralco Electric Co. vs. Commissioner of Internal Revenue**, 65 SCRA 351; **Insular Lumber Co. vs. CA**, 104 SCRA 710). In an action for refund, therefore, the burden of proof is upon the claimant to establish the right of refund;

8. Petitioner failed to show in its petition that it is entitled to a refund. Mere allegations of refundability does not _ipso facto_ entitle petitioner to the refund claimed. Thus, petitioner's failure to sustain the burden is fatal to its action for refund;

9. It is incumbent upon the taxpayer to show that it has complied with the provisions of Section 204 and Section 230 of the Tax Code.

The investigation conducted by the VAT examiners as a consequence of this claim for refund of petitioner gave rise to the conclusion that petitioner is not entitled to a refund but is even liable for the payment of a deficiency tax in the total amount of P8,012,213.47 (Exhibit "A") for the whole taxable year of 1990. The result of the investigation led to the issuance of an assessment notice with a demand to pay the aforementioned amount. This assessment was duly protested by the petitioner in a letter dated January 13, 1994. This protest is still pending decision in the administrative level (see page 198 of CTA records).

During the hearing conducted on February 21, 1994, Mrs. Angelita de Guzman, the Revenue Enforcement Officer of the BIR, admitted that the amount claimed by the petitioner was disallowed because sale of gold to the Central Bank is considered as a domestic sale subject to 10% VAT pursuant to RAMO 22-92 and that the alleged excess input tax was applied to the total output tax deficiency corresponding to such sale.

Petitioner maintains that the sale of gold to the Central Bank is considered as an export sale subject to zero rate pursuant to VAT Ruling No. 373-88 dated August 23, 1988. It was again so declared under RMC No. 59-88 dated December 14, 1988.

Respondent, on the other hand, invokes VAT Ruling No. 8-92 dated January 23, 1992 and RAMO 22-92 which considers sale of gold to Central Bank as a domestic sale, Furthermore even if the transaction covered by this petition refers to 1990, the applicability of the aforecited rulings retroacts to the year 1988 by virtue of VAT Ruling No. 59-92.

In a general sense, the issue presented to Us for resolution is whether or not the sale of gold sold by the petitioner to the Central Bank is classified as zero-rated in accordance with Section 100(a)(2) of the Tax Code. Corollary to this issue is the question of the retroactivity of VAT rulings, whether or not VAT rulings issued in 1992 which considers sale of gold to CB as a domestic sale can be retroactively applied to the year 1990.

These issues presented to this Court for resolution have been comprehensively disposed of in the case entitled **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 4794, May 4, 1994, when We ruled that the sale of gold to the Central Bank does not fall under any of the categories of sales which can be classified as zero-rated in accordance with Section 100 of the Tax Code, quoted hereunder, thus:

> **SEC. 100. Value-added tax on sale of goods.** - (a) *Rate and base of tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the following sales by VAT-registered persons shall be subject to 0%:
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> (1) export sales; and
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> (2) sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.
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> "Export sales" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that my be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. "Foreign currency denominated sales" means sales to non-residents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign

currency remitted through the banking system in the Philippines.

The aforecited provision of law divides zero-rated transactions into 2 general classes; export sales and those which can be classified as effectively zero-rated. An analysis of the first class of zero-rated transaction clearly shows that to fall under the term "export sales", there must either be actual exportation of goods to a foreign country or must fall under the category of foreign currency denominated sale. In the Atlas Consolidated Case (Supra), We ruled that sale of gold to the Central Bank cannot be categorized under Section 100(a)(1) of the Tax Code when this Court declared:

> "1. In general, for purposes of the term 'export sale', only direct export sales and foreign currency denominated sales, shall be qualified for zero-rating."
>
> The law strictly limits "export sale" <u>only</u> to direct export sales and foreign currency denominated sales, to be qualified for zero rating.
>
> It is a settled rule of statutory construction that the express mention of one person, thing or consequence implies the exclusion of all others. *Expressio unius est exclusio alterius.* Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. **(Hongkong and Shanghai Bank vs. Peters, 16 Phil. 824)**

Neither can the sale of gold to the Central Bank be classified as effectively zero-rated sale under Section

100(a)(2) of the Tax Code because under such provision, there must be a special law or an international agreement granting an exemption which effectively subjects such sales to zero-rate. In the instant case, there is no such law or agreement granting tax exemption to sellers of gold to the Central Bank and this was meticulously tackled in the Atlas Consolidated case when this court analyzed all such laws invoked by the petitioner Atlas Mining Corporation purportedly granting them exemption, portions of the aforementioned decision are quoted hereunder thus:

> Neither can we subscribe to petitioner's contention that its sale to the CB, PASAR and Philphos, being constructive exports under special laws, should be considered as "effectively zero rated" transactions under Section 100(a)(2) of the Tax Code. Under the said provision, only those sales made to "entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate" can be considered as being "effectively zero rated." Otherwise stated, for a sale to be considered effectively zero-rated, it must be shown that the buyer is entitled to an "exemption" under certain special laws or international agreements, and that such "exemption effectively subjects the sale to zero rate.
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> In the case at bar, the special laws cited by petitioner in support of its contention, are Section 169 of Central Bank Circular No. 960, as amended by CB Circular No. 1301, and Articles 23, 39(k) and 77 of Executive Order No. 226 otherwise known as the Omnibus Investment Code. A close scrutiny of said

provisions, however, readily shows that they fail to meet the qualifications prescribed by Section 100(a)(2) of the Tax Code. In respect of Section 169 of CB Circular-960, all that said provision states is that "gold producers shall qualify as export oriented firms even if their entire output is sold to the Central Bank." It does not, however, grant such producers any exemption in respect of internal revenue taxes due on its sales to the Central Bank. Neither is there anything in the said provision which effectively subject sales of gold to the CB to a zero-VAT rate. On the contrary, as pointed out by respondent Commissioner, the said provision was based on Executive Order No. 581 which is a <u>tax imposition</u> law and not a tax exemption law. Thus:

> "Section 2. Gold sold to the Central Bank shall be considered export and shall be <u>subject to the export and premium duties</u>. The Central Bank and the Bureau of Customs are hereby directed to implement this provision."

The same may be said of petitioner's sales to PASAR and Philphos. There is nothing in Articles 23, 39 and 77 of Executive Order No. 226 (the Omnibus Investment Code) which grants any form of tax exemption to sellers of goods to export processing zone enterprises. In fact, under Article 39 of the said Code, the sale of raw materials to an export processing zone registered enterprises merely entitled such enterprise to "tax credits" equivalent to the national internal revenue taxes and customs duties paid on such raw materials. Even then, the same provision states that to entitle the enterprise concerned to such tax credits, the raw materials purchased must form part of the export products exported directly or indirectly by such registered enterprise.

It is axiomatic that one who claims a tax exemption must point to the specific provision of law expressly and categorically granting such exemption. In the case at bar, we are hard put to find anything in the provisions of the Omnibus Investment Code cited by petitioner which grants any form of tax exemption. Had the law intended to exempt suppliers of raw materials to EPZA-registered enterprises from the payment of internal revenue taxes, it would have stated so in no uncertain terms as it did, for instance, in Article 39(c) thereof in respect of importations of capital equipment. Thus:

> "(c) The Tax and Duty Exemption on Imported Capital Equipment. - Within five (5) years from the effectivity of this Code, importations of machinery and equipment and accompanying spare parts of new and expanding registered enterprises <u>shall be exempt</u> to the extent of one hundred percent (100%) of the customs duties and national internal revenue tax payable thereon x x x"

From the foregoing, it is clear that petitioner's sales to the CB, Pasar and Philphos do not fall under the coverage of Section 100(a)(2) of the Tax Code. Accordingly, they cannot be considered effectively zero-rated transactions.

Petitioner in the instant case takes issue as to the validity of VAT Ruling No. 59-92 which provides for the retroactive application of VAT rulings No. 8-92 and RAMO 22-92 which categorizes sale of gold to the Central Bank as a domestic sale subject to the 10% VAT. It is their contention that the application of a ruling which took effect in 1992 cannot be made to apply to transactions that took place in 1990 because this will be in contravention of Section 246 of the Tax Code which provides as follows:

> **Section 246.** *Non-retroactivity of rulings.* - Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding Section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him be the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith.

Petitioner asserts that when it sold gold to the Central Bank from the period July 1 to December 3, 1990, it relied on VAT Ruling No. 373-88 dated August 23, 1988 and RMC No. 59-88 dated December 14, 1988 which both declared that sale of gold to CB shall be considered as an export sale subject to zero-rate. As a result it did not pass on the 10% VAT to the Central Bank because they considered this sale as zero-rated, such that it will be highly prejudiced to have the BIR reject their claim for refund of input taxes for the said period because this would correspond to the 10% VAT which they should have paid for their sale of gold to the Central Bank. Moreover, the notice issued by the BIR assessing them for the 10% VAT on the sale of gold to CB makes the prejudice suffered by them all the worse.

We find no merit in the contention of petitioner and We hold that the retroactive application of VAT ruling Nos. 008-92 and 59-92 will not be prejudicial to petitioner. We subscribe to the reasoning of respondent Commissioner embodied in his Ruling No. 59-92, when he declared that:

> "When the same mining companies, relying upon the aforementioned earlier BIR rulings, sold their gold to the CB at zero rate VAT, they did not fully pass on to the CB the cost of their respective input taxes. Said input taxes remained in their possessions (sic.). The only repercussion of the revocation of the said earlier rulings is - they will be prevented the option of claiming said input taxes as refund. But, they remain entitled to use the same in paying their output taxes in connection with their other sales transactions which are subject to the 10% VAT. It follows, these is no prejudice that may ensue from the retroactive application of the said revocation because what they only lose is the right to have their input taxes refunded which, in the first place and under the law, they are any way, clearly not entitled to. Granting for the sake of argument, that they have no other sales transactions subject to 10% VAT against which their input taxes may be used in payment, then, it follows, they are constituted as the final persons against which the costs of the tax passed-on shall legally stop and rest, hence, in this connection, the said input taxes may already be legally converted as cost available as deduction for income tax purposes. On this score, they are also not prejudiced by the retroactive application of the said ruling."

WHEREFORE, in view of the foregoing, the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(Dissenting Opinion)

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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