REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING and DEVELOPMENT CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 4794**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - - x

11/08/93

D E C I S I O N

To this Court comes petitioner Atlas Consolidated Mining and Development Corporation with the prayer that respondent Commissioner of Internal Revenue be ordered to refund or issue a tax credit certificate to herein petitioner for the sum of ₱40,078,267.81, representing input value-added tax (VAT) allegedly paid during the first quarter (January to March) of 1990 as shown in its application for tax credit/refund filed on July 24, 1990 (p. 262, BIR Records).

The facts of the case as manifested by the parties in the Joint Stipulation of Facts submitted to this Court on January 8, 1993 are as follows (pp. 40-55, CTA Records):

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of mining, production, and sale of various mineral products, consisting principally of copper concentrates and gold. It is registered with the Bureau of Internal Revenue (BIR) as a VAT enterprise.

Pursuant to Section 100(a)(2) of the Tax Code, as amended, petitioner applied for zero-rating of the following sales:

(1) Gold to the Central Bank of the Philippines (CB)

(2) Copper concentrates to the Philippine Associated Smelting and Refining Corporation (PASAR)

(3) Pyrite concentrates to Philippine Phosphate Fertilizer Corporation (Philphos)

The BIR's approval of sales to CB and PASAR was dated April 21, 1988 (Annex "A") while zero-rating of sales to Philphos was approved effective June 1, 1988 (Annex "B").

PASAR and Philphos are registered with the Board of Investments (BOI) and Export Processing Zone Authority (EPZA) as export-oriented enterprises located in an EPZA zone.

In the VAT return filed by petitioner with the BIR on April 20, 1988 covering the period January to March 1990, petitioner declared its sales to CB, PASAR and Philphos as zero-rated sales and therefore not subject to the 10% output VAT (Annex "C-1").

Petitioner applied with respondent on July 24, 1990 for tax credit/refund of input VAT paid on its purchases of goods and services for the first quarter of 1990 in the total amount of ₱40,078,267.81 (Annex "D").

No action had as yet been taken by respondent on the aforementioned application at the time the instant petition for review was filed on April 20, 1992, the avowed purpose of which is to beat the two-year reglementary period within which a judicial claim should be filed. Subsequently, an amended application for tax credit/refund was filed on September 22, 1992 reducing the amount claimed to ₱35,522,056.58 (Annex "E"; p.265, BIR Records). On or about September 22, 1992, respondent approved the issuance of tax credit certificate to petitioner but only in the amount of ₱2,518,122.32 while disallowing ₱33,003,934.26. The detailed computation is shown below (Annex "F"; p. 295, BIR Records):

Amount Claimed		₱35,522,056.58
Less-Disallowances		
(a) No O.R./Invoices/Proper Documents	₱1,384,172.48	
(b) Invoice w/o VAT Registration No.	474,606.87	
(c) Invoice w/ Sold to "Cash"	31,499.04	
(d) Invoice w/o authority to print	326,674.23	
(e) VAT No. stamped/typwritten handwritten printed in 1988-1989	441,195.54	
(f) Others	71,088.09	
(g) Erroneous computation	85,382.58	2,814,318.83
Allowable Input Tax		₱32,707,737.75
Other Deductions:		
(h) Output tax due on Miscellaneous taxable sales	₱ 972,535.67	
(i) Output tax due on sale of gold to Central Bank (179,314,048.17 * 1/11)	16,301,277.11	
(j) Input tax attributable to sales to PASAR (No valid BOI certification as required by RMO 22-92)	12,404,150.65	
(k) Input tax attributable to sales to Philphos (No BOI certification)	501,652.00	
(l) Penalty for issuance of invoices without authority to use loose leaf sales invoices	10,000.00	30,189,615.43
Allowable Input Tax Recommended for issuance of Tax Credit Certificate		₱ 2,518,122.32

The foregoing disallowances and other deductions which effectively denied a substantial portion of the claim for input VAT refund/tax credit are assailed by petitioner for various reasons.

A supplemental report of investigation was submitted by the BIR examiners on October 15, 1992 recommending the increase in allowable input tax credit from ₱2,518,122.32 to ₱12,101,569.11 or an increment of ₱9,583,446.79 due to petitioner's submission of BOI certifications on the sales to PASAR which brought down the deduction of ₱12,404,150.65 to ₱2,518,122.32 (pp. 344-367, BIR Records).

The issues raised and agreed upon by the parties in their respective pleadings are as follows:

a. the validity of VAT Ruling No. 008-92 in connection with -

   i. the applicability of 10% VAT on sales of copper concentrates to PASAR and pyrite to Philphos;

   ii. the application of 10% VAt on sales of gold to CB;

b. the validity of VAT Ruling No. 59-92 which applies retroactively VAT Ruling 008-92 dated January 23, 1992;

c. the applicability of Revenue Regulations No. 2-88 in that it requires the purchaser to export more than 70% of its total annual production for the supplier's sales such as petitioner's to be 100% zero-rated;

d. the validity of the disallowance of input taxes in the amount of ₱2,814,318.83 on the ground that petitioner has not complied with Section 108(a) of the NIRC;

e. the validity of BIR Regulations that automatically disallow VAT refund for failure to present required documents although the purchase can be substantiated by other documents;

f. the propriety of deducting the "output tax on miscellaneous taxable sales" from the current input tax instead of against petitioner's presumptive input tax (PIT) which, as per BIR findings are sufficient to cover the amount assessed;

g. the mandatory nature of Section 106(e) of the NIRC prescribing a specific period of sixty (60) days within which to process and grant applications for input VAT refund and the corresponding right given to claimants to apply VAT credits to other tax liabilities as allowed under

Section 104(b) of the NIRC law as well as interest for the delay in the grant of petitioner's claims for VAT refund/credit.

It is axiomatic that the Court can only adjudicate and render its opinion on matters as to which there is a live or justiciable controversy brought before it. It cannot render such opinions on the basis of hypothetical disputes or disputes which are not yet ripe for adjudication. The task of the Court is to adjudicate on actual disputes and not to render advisory opinions.

To the mind of the Court, the threshold issue involved in this case is whether under the peculiar set of facts obtaining in the case at bar, petitioner is entitled to claim any value-added tax credit/refund. If the answer is in the negative, there would be no need to dwelve into the other issues agreed upon by the parties, as there would no longer be any live controversy to speak of and any ruling this Court may lay down on said issues would partake of the nature of a mere advisory opinion.

The records of the case show that although the parties stipulated that petitioner is a VAT registered enterprise per its Registration No. 32-A-6-002224, the VAT Registration Certificate of petitioner as appearing in the records is 32-0-004622 and not 32-A-6-002224 (p. 250, BIR Records). Section 107(d) of the NIRC states that "each VAT-registered person shall be assigned only one registration number." We are therefore at a loss as to where petitioner got its alleged VAT Registration No. 32-A-6-002224 which it used in the VAT return and application for tax credit/refund that it filed.

In addition, the Court likewise notes that the supposed effectivity date of petitioner's VAT Registration (per its Registration Certificate submitted) was August 15, 1990, whereas the input VAT refund it seeks covers the period from January to March 1990. Since liability for VAT commences only on the first day of the month following the registration of the enterprise (Section 23, Revenue Regulations No. 5-87), the reckoning point for petitioner's entitlement to any refund/tax credit should likewise be counted from the same date, i.e., September 1, 1990.

BIR Rulings cannot, as a rule, be given retroactive effect (Commissioner of Internal Revenue vs. Burroughs Limited 142 SCRA 324)

The Court can only ascertain the truth respecting a matter of fact by means of evidence presented before it. The VAT Registration Certificate submitted by petitioner plainly shows that it became effective on August 15, 1990. It therefore follows that prior to said date, petitioner was not registered enterprise under the VAT system. And not being then a VAT-registered person, petitioner is not entitled to any tax credit/refund of input VAT paid for the period from January to March 1990, pursuant to Section 16(a) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88 dated April 7, 1988, which states as follows:

> "Sec. 16. ***Refunds or tax credits of input tax.*** - (a) Zero-rated sales of goods and services. - Only a VAT-registered person may be given a tax credit certificate or refund of value-added taxes paid corresponding to the zero-rated sales of goods or services, to the extent that such taxes have not been applied against output taxes, upon showing of proof of compliance with the conditions stated in Section 8 of these Regulations." (Underscoring supplied).

Rule is settled that laws granting exemptions from tax are construed strictissimi juris against the taxpayer and liberally construed of the taxing power (*Mitsubishi Motor Corp. vs.. CIR*, 181 SCRA 214).

Having determined that petitioner is not entitled to the tax refund claimed by it, the Court deems it unnecessary to dwell on the other issues raised and agreed upon by the parties. The resolution of these issues are no longer germane to the adjudication of petitioner's rights under the specific circumstances obtaining in the case at bar. There is no longer any live or justiciable controversy which the Court is called upon to adjudicate. Any opinion We render on such other issues would be mere obiter dictum and, worse, would partake of the nature of a mere advisory opinion. The Court is not prepared to embark upon such a tenuous venture, especially considering the serious implications that an adverse ruling may have on the administration of the VAT system.

Lastly, taxes are what we pay for a civilized society. Without taxes the government would be paralyzed for lack of the motive power to actuate and operate it. It is the lifeblood of the government and so should be collected without unnecessary hindrance. (*Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc.*, G.R. 76281, 30 Sept. 91)

WHEREFORE, in view of the foregoing, the Court resolves to DENY the petition for lack of merit.

SO ORDERED.

Quezon City, November 8, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

Concurs & Dissents
in a separate opinion
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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