REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5114

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 12 1996

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DECISION

This case involves a claim for refund in the amount of P1,130,589.66, representing input value added tax (VAT) paid on domestic purchases of taxable goods and services for the period June 1, 1992 to December 31, 1993.

Petitioner is a domestic corporation, primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores found in Parcel One of the Surigao Mineral Reservation Area in the Municipality of Claver, Surigao, del Norte.

On January 1, 1988, it registered with the BIR as a VAT entity and was issued VAT Registration No. 32-A-0-003939 (Exh. "I", Pet.; p. 128, CTA rec.).

It also registered with the Board of Investments (BOI) as a non-pioneer enterprise and was given a BOI Certificate of Registration No. EP 88-306 (Exh. "G", Pet.; p. 121, CTA rec.).

For the period June 1, 1992 to December 31, 1993, petitioner realized zero-rated sales amounting to P103,740,717.36, which were paid in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the regulations of the Central Bank of the Philippines.

For the same period, June 1, 1992 to December 31, 1993, petitioner accumulated VAT input taxes in the total amount of P1,130,589.66 paid on its purchases of taxable goods and services. As these input taxes were directly attributable to petitioner's zero-rated sales, and were not used for any VAT output tax, petitioner alleged that they are available as tax credit.

Hence, on May 27, 1994, petitioner filed with the BIR a written claim for refund of the amount of P1,130,589.66 (Exh. "L", Pet.; pp. 141-142, CTA rec.).

To toll the running of the two-year prescriptive period, on May 30, 1994, petitioner filed with this Court the instant petition.

Respondent filed her Answer on July 27, 1994, alleging the following special and affirmative defenses:

1. The petition did not indicate the dates of payment of the taxes sought to be refunded, hence, no cause of action;
2. The claim for refund is still pending investigation by respondent;
3. Petitioner did not comply with the provisions of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations 3-88;
4. The input taxes paid are not supported by invoices as required by Section 108 of the Tax Code; and
5. Claims for refund are in the nature of exemption from taxes and should be construed strictly against the taxpayer.

The sole issue needing ventilation in this case is whether or not petitioner is entitled to the refund of the amount of P1,130,589.66 as input value added tax paid on domestic purchases of taxable goods and services for the period June 1, 1992 to December 31, 1993.

On account of the voluminous sales invoices and official receipts which petitioner had to present during the trial to support its claim, the services of Punongbayan and Araullo, an independent Certified Public Accountant (CPA), were availed of in accordance with CTA Circular 1-95. Their findings as contained in their

Certification, marked as Exhibit "A" for petitioner (pp. 52-54, CTA rec.), are as follows:

1. The VAT paid per summaries prepared by petitioner for the period June 1, 1992 to December 31, 1993 are properly recorded in the books;
2. The date of the invoices and/or official receipts is within the period covered in the application for refund;
3. The suppliers' VAT numbers are indicated on the invoices;
4. The suppliers' invoices on file represent original copies;
5. The VAT paid are correctly and properly computed; and
6. The export sales indicated in the summary are also recorded in the books.
7. However, tax credits being applied for in the amount of ₱93,000.07 are not supported by suppliers' invoices and/or official receipts.

After a careful review of all the exhibits presented by petitioner, the Court agrees with the independent CPA's finding (Exh. "A", Pet.; p. 53, CTA rec.) that the amount of P93,000.07, which are not supported by the suppliers' invoices and/or official receipts or where there are no original sales invoices (Exh. "B-2", Pet.; pp. 117-119, CTA rec.), should be disallowed pursuant to Section 108(a) of the Tax Code.

Section 108(a) provides as follows:

> "SEC. 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 receipt 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 purchaser 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."

Moreover, Section 15 of Revenue Regulations No. 5-87, as amended, also known as "VAT Implementing Regulations", issued on September 1, 1987, expressly provided that:

> "Section 15. Substantiation of claims for input tax credit. - (a) *In general*. - Input taxes shall be allowed only if the domestic purchase of goods or services is made in the course of his trade or business and <u>supported by an invoice or receipt</u> 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 credit." (Underscoring supplied)

This Court's findings are in agreement with respondent's view that "input taxes shall be allowed as tax credit only if supported by invoices or receipts showing, among others, the VAT registration number of the seller and the name of the purchaser, customer or client" (Memorandum, Resp.; p. 196, CTA rec.). Due to the aforesaid disallowance of Exhibit "B-2" found in pages 117 to 119 of the CTA record, the Court recommends only the refund of the input tax credits which have been duly supported by the suppliers' invoices and/or official receipts. Hence, only the amount of P1,075,766.43 should be refunded to petitioner. Details of the computation are shown hereunder:

	Exh. "B" Head Office	Exh. "B-1" Mine Site	Summation Per Quarter	Exhs. "L" & "L-1" Claimed w/ BIR	Refundable
June 1992	P 77,755.12	P 60,686.69			
July 1992	60,018.35	68,023.02			
August 1992	58,495.24	64,008.36	P 388,986.78	P 388,480.88	P 388,480.88
September 1992	19,613.21	67,393.17			
October 1992	80,003.09	71,632.78			
November 1992	22,128.94	36,203.07	296,974.26	279,974.43	279,974.43
December 1992	4,141.98	36,531.42			
January 1993	22,492.57	18,201.74			

February 1993	4,343.75	15,992.27	101,703.73	105,466.42	101,703.73
March 1993	7,769.83	10,106.33			
April 1993	4,032.70	19,233.34			
May 1993	837.73	22,309.68	64,289.61	91,453.86	64,289.61
July 1993	6,630.04	22,669.13			
August 1993	13,660.07	29,863.31			
September 1993	7,698.67	53,361.69	133,882.91	126,209.21	126,209.21
October 1993	12,722.62	46,137.40			
November 1993	7,732.67	26,568.61			
December 1993	10,396.78	11,550.49	115,108.57	139,004.86	115,108.57
T O T A L	P436,880.00	P723,418.38	P1,100,945.86	P1,130,589.66	P1,075,766.43

The evidence presented by respondent consisting of Exhibits "1" and "2", found in pages 21 and 23 of the BIR records did not in any way controvert the evidence of petitioner. Exhibit "1" of respondent, which is the memorandum signed by the Asst. Revenue District Officer and addressed to Revenue Enforcement Officer, M. Leonida and Group Supervisor, E. Litao, merely directed them to conduct an investigation on the subject claim for refund, and to submit a report thereon. Exhibit "2" is the reply memorandum of said examiners stating that the refund claim is now lodged with this Court, and therefore, the BIR records should now be forwarded to their Legal Division. These exhibits do not have any probative value, neither do they have any prejudicial effect on petitioner's entitlement to the reduced amount of refund.

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED to REFUND** in favor of petitioner, the amount of P1,075,766.43 as input taxes paid during the period June 1, 1992 to December 31, 1993.

DECISION
C.T.A. CASE NO. 5114

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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