REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORP.,
Petitioner,

- versus -

C.T.A. CASE NO. 5322

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
AUG 24 1998

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DECISION

This is a judicial claim for refund/tax credit of input value-added taxes ("VAT" for brevity) allegedly paid by the petitioner on its export sales during the fourth quarter of 1993 in the amount of P4,534,933.74.

Petitioner is a corporation duly organized and existing under Philippine laws with office address at the 2nd floor of Phelps Dodge Annex Building No. 2, Pioneer St., Mandaluyong City, Metro Manila. It is mainly an exporter of copper concentrates and, as such, is allegedly a zero-rated VAT person under Section 100 of the Tax Code (Petitioner, par 2, Exhibit "F").

The facts are simple.

On January 20, 1994, petitioner filed its VAT return for the fourth quarter of 1993 showing a total input tax of P863,556,963.74 and an excess VAT credits of P842,336,291.60 (Annex "A" of petition). On January 25,

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1996, it applied for refund or the issuance of a tax credit certificate of the abovestated amount with the respondent (Exhibit "H", inclusive). On the same date, petitioner elevated its application before this Court in view allegedly of the near expiry of the two-year prescriptive period provided in Section 230 of the Tax Code.

Petitioner simply reasserts its claim for refund. Respondent, on the other hand, submitted no answer and has been declared in default (Resolution, dated August 27, 1996). Consequently, only the petitioner was able to present evidence in this case. For unknown reasons, however, petitioner failed to file its memorandum within the time given by the Court.

The singular issue at bar is whether or not petitioner is entitled to its claim for refund.

We peremptorily rule against the petitioner.

The records show that petitioner has not been able to prove the veracity of the amount being claimed by its failure to satisfy the documentary requirements of a valid claim for refund as prescribed under Section 16 of Revenue Regulations No. 5-87 on refunds or tax credits of input taxes, as amended by Revenue Regulations No. 3-88, dated April 7, 1988, thus:

xxx xxx xxx

> A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund In addition, the following documents shall be attached whenever applicable:
>
> "1. *Export Sales*
>
> "i) Photo copy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.
>
> "ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.
>
> xxx xxx xxx
>
> In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund. (Underscoring supplied)
>
> xxx xxx xxx

The formal offer of evidence of the petitioner failed to include photo copy of its export documents, as required. There is no way, therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be entirely attributable to the zero-rated transaction, in this case, export sales of goods. Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being directly attributable to the goods so exported.

Lastly, We cannot grant petitioner's claim for tax credit or refund of input taxes due to its failure to show convincingly that the same has not been applied to any of its output tax liability as provided under Section 106(a) of the Tax Code, *supra*. There is no evidence to show that the amount of herein claim for refund when applied for on January 25, 1996 has not been priorly or thereafter applied to its output tax liability.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SABA
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
Court of Tax Appeals

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