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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5296

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
OCT 02 1997

x - x

DECISION

This case involves a claim for refund/tax credit of input value added taxes paid during the third quarter of 1993 (July to September) in the amount of P7,076,520.27.

Petitioner is a corporation duly organized and existing by virtue of the laws of the Philippines and is engaged in the business of mining, milling, and marketing of mineral products such as copper, gold, and its by products.

Pursuant to Section 107 of the National Internal Revenue Code, as amended, petitioner is a registered VAT taxpayer with VAT Registration No. 32-0-004622 (Exhibit "J"). It applied for VAT zero-rating on its sales, including export sales which was duly approved by the BIR (Exhibit "C").

During the third quarter of 1993 (July to September), all its copper concentrates and gold productions were exported and sold to foreign buyers. The copper concentrates were sold to Mitsubishi Materials Corporation of Japan part of Marc Rich and Company, and the gold productions were sold to Centrotrade Minerals and Metals based in Switzerland (Exhibits "A", "A2", TSN, Hearing of March 13, 1996, p. 8). For this period, petitioner filed monthly and quarterly VAT returns and correspondingly paid the VAT dues (Exhibits "D", "E", "F").

On October 6, 1995, petitioner, being a zero-rated VAT entity, applied for the issuance of tax credit certificate/refund pursuant to Section 106(b) of the NIRC for VAT paid for the third quarter of 1993 in the amount of P7,076,520.27 as per application (Exhibit "G", p. 7, CTA records). As the claim for refund/tax credit has not been resolved by the Bureau of Internal Revenue (BIR) to date, petitioner was left without recourse but to elevate its case before this Court by way of petition for review on October 20, 1995 in order to toll the running of the two-year prescriptive period under Section 230 of the National Internal Revenue Code (NIRC), as amended. For failure of respondent Commissioner of Internal Revenue to file her answer to the petition for review within the period provided by law, she was declared in default by this Court in a resolution promulgated on March 19, 1996 (p. 14, CTA records), thus, the case was tried *ex parte*.

The issue to be resolved in this case is whether or not petitioner is entitled to refund/tax credit in the amount of P7,076,520.27 representing input value added taxes paid during the third quarter of 1993 (July to September).

Petitioner believes that it is entitled to the refund sought anchoring its stand on Section 106(b) of the NIRC, to wit:

> **Section 106.** ***Refunds or tax credits of input tax.*** - *(a) Export Sales.* - x x x
>
> *(b) Zero-rated or effectively zero-rated sales.* - Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax. (Underscoring supplied)
>
> *(c) Capital goods.* - x x x

After a careful scrutiny of all the documents/exhibits presented and submitted, the Court finds that the subject claim for refund cannot be entertained because of prescription. The records reveal that the claim for refund was not filed within the reglementary period of two years, pursuant to Section 106(b) in relation to paragraph (e) of the same Section of the National Internal Revenue Code, which provides:

> **Section 106.** ***Refunds or tax credits of input tax.*** - x x x
>
> *(e) Period within which refund of input taxes may be made by the Commissioner.* - The Commissioner shall refund input taxes within 60

> days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c) as the case may be. (Underscoring supplied)

It is undisputed that petitioner filed an application for refund with the Commissioner of Internal Revenue on October 6, 1995 and the judicial action was only instituted on October 20, 1995, the subject matter of the case being the input taxes paid for the third quarter of 1993. Applying the aforementioned provisions of the law in the case at bar, it appears that when petitioner filed its petition for review on October 20, 1995, more than two years had elapsed from the close of the third quarter of 1993, which was on September 30, 1993. Clearly, the petitioner's claim for refund of input taxes had already been barred by prescription as shown below:

Period Claim	Close of the Quarter	Date Filed BIR	CTA
07-01-93 to 09-30-93	09-30-93	10-06-95	10-20-95

Furthermore, it should be stressed that the two-year period provided for under Section 230 of the National Internal Revenue Code (NIRC) should be read in conjunction with Section 106 of the same Code (**Nichimen Corporation, Philippine Branch vs. Commissioner of**

Internal Revenue, CTA Case No. 4431, February 13, 1995), when it comes to the refund of input taxes.

WHEREFORE, premises considered, finding the petition unmeritorious for being filed beyond the two year reglementary period prescribed under Section 106(b) of the NIRC, the same is hereby **DISMISSED**. Accordingly, the claim for refund filed by the petitioner for input taxes paid during the third quarter of 1993 is **DENIED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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