REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

-versus-

CTA CASE NO. 5306

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 15 1998

x --- x

DECISION

This is a petition seeking for the issuance of tax credit certificates in the amounts of P19,830,759.02 and P18,423,068.73 or an aggregate amount of P38,253,827.75, representing alleged unutilized input tax credits for the quarters ended March 31, 1994 and June 30, 1994.

Petitioner is a domestic corporation engaged in the mining business which includes the exploration, development and operation of mining properties for purposes of commercial production, and the marketing of marketable mineral products produced by it. Almost 100% of its mineral products are exported. Petitioner is a VAT registered taxpayer with VAT Registration No. 31-9-000027 (Exh. "A"). Likewise, on May 4, 1988, it obtained from the Bureau of Internal Revenue (BIR)an approval of its application for zero rate on its sales of mineral products (Exh. "B").

For the quarter ended March 31, 1994, petitioner filed its VAT return and amended VAT return with the BIR on April 20, 1994 and May 12, 1994, respectively (Exhs. "C" and "D"), reflecting a total VAT output tax of P7,098,575.34 and a total VAT input tax of P28,947,249.12, resulting in excess input taxes in the amount of P21,848,673.78, computed as follows:

Gross taxable goods/services	P 70,985,753.40	P 7,098,575.34	(VAT output tax)
Less: Details of Purchases			
Domestic purchases			
of goods/services	245,721,069.90	24,572,106.99	(VAT input tax)
Importation of goods	43,751,421.30	4,375,142.13	(VAT input tax)
Excess input taxes		P21,848,673.78	

In the same manner, for the quarter ended June 30, 1994, petitioner filed with the BIR its VAT return on July 20, 1994 (Exh. "E") reflecting a total VAT output tax of P5,349,668.18 and a total VAT input tax of P 24,085,709.61, resulting in excess input taxes amounting to P18,736,041.43, computed as follows:

Gross taxable goods/services	P 53,496,681.80	P 5,349,668.18	(VAT output tax)
Less: Details of purchases			
Domestic purchases			
of goods/services	199,177,712.30	19,917,771.23	(VAT input tax)
Importation of goods	41,679,383.80	4,167,938.38	(VAT input tax)
Excess input taxes		P18,736,041.43	

Pursuant to BIR Revenue Audit Memorandum Order No. 2-93, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance separate applications for tax credit of excess input taxes paid during the period January to March 1994 on April 26, 1995 in the amount of

P19,830,759.02 (Exh. "F") and during the period April to June 1994 on June 6, 1995 in the amount of P18,423,068.73 (Exh. "H").

There being no action on the part of herein respondent, the instant petition was filed on December 20, 1995 to forestall the running of the prescriptive period for claiming tax refunds or credits.

On May 29, 1996, upon petitioner's motion, this Court declared respondent in default for failure to file her Answer despite receipt of summons on December 29, 1995.

The sole issue for resolution by this Court is whether or not petitioner is entitled to the issuance of tax credit certificates totaling P38,253,827.75 representing unutilized input VAT tax credits for the quarters ended March and June 1994.

After a thorough consideration of all the evidence presented, We rule against the petitioner.

It bears emphasis that in Our resolution dated February 12, 1997, Exhibits "K", "L", "M" and "O", inclusive of submarkings, were denied admission "**due to the fact that these exhibits, although part of petitioner's formal offer of evidence, were not duly marked by a Deputy Clerk of Court or a designated Commissioner, and because of the following grounds:**

> **CTA Circular No. 1-95 provides that the receipts, invoices, and other documents covering the tax accounts or tax payments for the period involved must be <u>pre-marked</u> by the party concerned. The Circular does not say that the Summary containing the total amount of said accounts or tax payments and Certification of an independent CPA attesting to the correctness of the contents of the Summary must also be pre-marked by the party concerned. Said circular only requires that the Summary and the Certification must**

> **be properly identified by a competent witness from the accounting firm and therefore should be properly marked by the Clerk of Court as part of its evidence.**" (CTA records, pp. 97-98).

Likewise, Exhibits "K-1-1" to "K-36-128" and "M-1-1" to "M-38-67" were denied admission "**as these all correspond to photocopies of value-added tax invoices which were all pre-marked and supposedly covered by the summaries that were all denied admission for reasons specified in no. 2 of this resolution. The admission of pre-marked documents is allowed only if the summaries/schedules covering such documents were properly presented, identified and marked in Court. In the instant case, the summaries were not marked, hence these pre-marked documents cannot be admitted as evidence for the petitioner.**" (CTA records, p. 98).

It follows then that with the denial of the aforementioned exhibits, petitioner's petition has practically nothing to stand on since the summaries of creditable value-added input taxes paid, together with its supporting invoices which could have proven the input taxes paid as well as the summaries of foreign currency inward remittances together with its supporting bank statements which could have also proven the amount of foreign currency inwardly remitted (and in effect the fact of export sales), were all denied admission. Petitioner, on its part, did not even bother to move for a reconsideration of the resolution denying these exhibits, hence, we can only decide the case on the basis of the evidence admitted.

WHEREFORE, while legally speaking, petitioner may be entitled to be issued tax credit certificates, We are left with no recourse but to **DISMISS** the instant petition for insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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