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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA MINING CORPORATION,
Petitioner,

-versus-

C.T.A. CASE NOS. 4644 and 4645

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 05 1997

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DECISION

This consolidated case involves claims for the refund or the issuance of tax credit certificate on input value-added tax (VAT) paid for periods covering January 1, 1989 to June 31, 1989, amounting to ₱3,192,737.60 (CTA Case No. 4644) and ₱1,594,814.26 from July 1, 1989 to December 31, 1989 (CTA Case No. 4645) in the aggregate amount of ₱4,126,884.36.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines. It is engaged principally in gold mining activities and is registered with respondent's Bureau as a VAT taxpayer in accordance with Section 107 of the National Internal Revenue Code (Tax Code, for short) as shown by its VAT Registration No. 32-6-0000632 (Exh. I). It is likewise registered with the Board of Investments under Certificate of Registration No. DP-88-259 (Exh. D-3) pursuant to the provisions of the Omnibus Investment Code of 1987.

Hereunder is the summary of petitioner's claims, to wit:

1989 Quarterly VAT Returns	Date of Filing	Creditable input VAT (Refundable)
1st	May 2, 1989	₱1,380,359.51
2nd	July 20, 1989	949,255.01
3rd	October 20, 1989	997,313.82
4th	January 22, 1990	799,956.02
	TOTAL	₱4,126,884.36

On March 7, 1991, petitioner filed with the respondent an Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) covering the period January 1, 1989 to June 30, 1989 in the amount of ₱3,192,737.60 (Exh. G) and likewise, filed another similar application on July 1, 1991, covering the period July 1, 1989 to December 31, 1989, in the amount of ₱1,594,814.26 (Exh. H), for a total of ₱4,787,551.86.

On September 19, 1991, petitioner filed the two instant petitions before this Court in accordance with Section 230 of the Tax Code, allegedly due to the continued inaction of the respondent on said applications.

In her answers, respondent avers, ***inter alia***, that the claim for refund with respect to CTA Case No. 4644, covering the period January 1, 1989 to June 30, 1989, amounting to ₱2,329,614.52 has already prescribed when reckoned from its date of filing of the petition on September 19, 1991 and, as regards CTA Case No. 4645, the portion of the claim which was paid more than two (2) years prior to September 19, 1991, when these cases were filed, is likewise barred by prescription, pursuant to Section 230 of the Tax Code.

Records show that in a Memorandum, dated August 14, 1992, respondent's revenue officers disallowed petitioner's claims and instead arrived at a deficiency VAT based on the following computation:

Output VAT on sale of gold		₱6,373,163.60
Output VAT on sale of silver		21,477.26
Output VAT on sale (deemed)		117,348.25
Total output VAT		₱6,511,989.11
Less: Allowable input VAT		
Input VAT per return	₱4,675,010.15	
Less: Disallowed input VAT	735,069.96	3,939,940.19
Deficiency Output VAT		₱2,572,048.92
Add: 25% Surcharge		643,012.23
Sub-total		₱3,215,061.15
Add: 20% Interest		1,671,831.70
Total		₱4,886,892.94

(pp. 97-102, BIR records; Memorandum of Petitioner in CTA Case No. 4644, p. 361, CTA records)

It can be gleaned from the above computation that the findings of respondent's examiners resulting to a deficiency VAT was due to the fact that petitioner's sale of gold to the Central Bank of the Philippines was **retroactively** subjected to the 10% VAT pursuant to VAT Ruling Nos. 8-92 and 59-92; and Revenue Memorandum Order (RMO) No. 22-92, all of which treated the sale of gold to the Central Bank of the Philippines as local sales subject to 10% VAT (Exh. 5, p. 177, BIR record; Memorandum of Petitioner, p. 362, CTA records).

Petitioner, however, takes exception to the aforecited issuances of the respondent. It maintains that the retroactive application of the issuances is legally and jurisprudentially oppressive because it is prejudicial to its interest. It ratiocinates, thus:

> "In BIR Ruling No. 059-92, the BIR stated that the mining companies will not be unduly prejudiced by a retroactive application of 008-92 because they only lost the right to have their input taxes refunded; but they may still use such input taxes to pay their output taxes on other activities subject to the 10% VAT. If there are no other sales transactions subject to the 10% VAT, the input taxes are converted into cost available for deduction for income tax purposes. Petitioner, however, did not have other activities subject to the 10% VAT. The conversion of the input taxes into cost deductions for income tax purposes is of no use because it has no income to deduct these from. Please note that deductions to be allowable must be incurred in the year the same is availed. Thus, in the case, Petitioner can no longer avail of the said alternative remedy of deduction of the VAT input as added cost as the same pertain to prior year's payment, the same can no longer be applied for future years. The fact remains, that Petitioner as well as other mining companies were not able to claim cash refunds which they can use to finance their operations. Neither were they able to obtain tax credits which they may use freely for the payment of their internal revenue tax liabilities. What is worse, is the fact that they were not able to pass on the 10% VAT to the Central Bank on the portions corresponding to local sales, if these sales should not have been treated as export sales.
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> Petitioner relied on the BIR's various administrative issuances that sales of gold to the Central Bank were zero-rated. It sold its gold products to the Central Bank without passing or billing the VAT on these sales, which it could have done. Petitioner stands now prejudiced to the extent of the 1/11 purchase price and there is no way Petitioner will recoup such loss. To assess Petitioner the

10% VAT on these sales would indeed be unduly prejudicial. (Memorandum of Petitioner, pp. 369-370, CTA records)

Moreover, petitioner submits that the aforesaid issuances of the respondent are contrary to law and established jurisprudence. It mentions from, among others, the letter, dated October 10, 1988 (Exh. C); VAT Ruling No. 100-000-00-378-88 (Exh. A) and Revenue Memorandum Circular No. 59-88 (Exh. B), which state that "sale of gold to Central Bank is considered export sale, hence, subject to zero-rate VAT pursuant to Section 100 (a) (1) of the Tax Code, as amended by E.O. 273, in relation to Executive Order No. 581 and Section 169 of CB Circular NO. 960"; Central Bank Circular No. 1301, dated August 7, 1991, which provides that "all sales of gold to the Central Bank are considered constructive exports" (Exh. E); Section 246 of the Tax Code on non-retroactivity of rulings; and the cases of **ABS-CBN Broadcasting v. Court of Tax Appeals and the Commissioner of Internal Revenue, 108 SCRA 142, and Commissioner of Internal Revenue v. Burroughs, Ltd. and Court of Tax Appeals, 142 SCRA 324**, where the doctrine stated that the government is not barred from effecting collection of the proper taxes due and collectible from taxpayers, as laid down in the case of **Milade v. Collector, 100 Phil. 288**, has been allegedly overturned by said cases. It asserts too that Central Bank Circulars have the force and effect of law, citing **People v. Que Po Lay, 44 Phil. 640.**

The issues thus confronting us are:

a) *Whether or not VAT Ruling No. 8-92, dated January 23, 1992, and RMO No. 22-92, dated May 14, 1992, which consider sales of gold to the Central Bank of the Philippines as domestic sales, can be given retroactive effect to petitioner's sales of gold to the same for the period January 1, 1989 to December 31, 1989; and if in the negative; and*

b) *Whether or not petitioner's claims have prescribed.*

Anent the first issue, this Court has ruled in a litany of cases in favor of the respondent. In **Benguet Mining Corporation v. Commissioner of Internal Revenue, consolidated CTA Cases Nos. 4429, 4495 & 4575, promulgated on March 23, 1995,** this Court subscribed to the view of the respondent, when We enunciated, thus:

> "In Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4794, [Resolution] April 5, 1994), We held that the retroactive application of VAT Rulings Nos. 8-92 and 59-92 may not necessarily be prescribed by Section 246 of the Tax Code, especially so where there is no showing of actual and imminent prejudice to the taxpayer as a result thereof. Thus:
>
> > `We hold that respondent Commissioner is correct in contending that petitioner will not suffer any undue prejudice from a retroactive application of VAT Rulings No. 008-92 and 59-92. As pointed out by respondent in his Ruling No. 59-92,
> >
> > > When the same mining companies, relying upon the aforementioned earlier BIR Rulings, sold their gold to the CB at zero rate VAT, they did not fully pass on to the CB the cost of their respective input taxes. Said input taxes remained in their possessions (sic). The only repercussion of the revocation of the said earlier rulings is - they be prevented the option of claiming the said input taxes as refund. But, they remain entitled to use the same in paying their output taxes in connection with their other sales transaction which are subject to the 10% VAT. It follows, there is no prejudice that may ensue from the retroactive application of the said revocation because what they only lose is the right to have their input taxes refunded which, in the first place and under the law, they are any way, clearly not entitled to. Granting for the sake of argument, that they have no other sales transactions subject to 10% VAT against which their input taxes may be used in payment, then, it follows, they are constituted as the final

persons against which the costs of the tax passed-on shall legally stop and rest, hence, in this connection, said input taxes may already be legally converted as cost as available as deduction for income tax purposes. On this score, they are also not prejudiced by the retroactive application of the said ruling.'

Petitioner's reliance on the ruling in the ABS-CBN case is clearly misplaced. In the first place, there is nothing in said decision which absolutely prohibits a retroactive application of the rules, regulations, rulings or decisions promulgated or rendered by respondent Commissioner pursuant to his rule-making authority. On the contrary, the decision clearly supports what We have stated here. Moreover, the factual situation obtaining in the **ABS-CBN** case is clearly not on all fours with the instant case."

We find the foregoing ruling applicable to the instant cases. The admitted evidence on record does not show that petitioner will be unduly prejudiced by the retroactive application of the questioned BIR rulings. The mere fact that petitioner may now be precluded from passing on the 10% VAT on its sales to the Central Bank and may thus no longer have such input taxes refunded in cash cannot necessarily be equated with undue prejudice since VAT Rulings No. 8-92 and 59-92 still provide petitioner avenues for relief, that is by converting said input taxes as cost deductions for income tax purposes. Petitioner has not shown by means of competent evidence that such alternative relief notwithstanding, it still stands to suffer undue economic prejudice in the sense that the amount which it would be entitled to deduct as costs for income tax purposes is substantially less than the amount of input taxes to which it could have been entitled to a refund if the questioned rulings were not applied retroactively. In other words, absent any showing that the alternatives available to petitioner under the questioned rulings are clearly inadequate, any claimed prejudice on petitioners part would at best be speculative. (Affirmed by the Court of Appeals on May 30, 1996)

(see also Itogon-Suyoc Mines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 4852, July 10, 1995; Manila Mining Company v. Commissioner of Internal Revenue, CTA Case No. 4860, February 20, 1995; and Benguet Corporation v. Commissioner of Internal Revenue in CTA Case No. 4945, January 26, 1995, and CTA Case No. 5007, February 14, 1995)

Prescribing from the above, this Court deems it moot and academic to delve into the second issue inasmuch as the claims at bar are legally untenable.

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

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding 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