Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SEMIRARA MINING CORPORATION (formerly: SEMIRARA COAL CORPORATION),
Petitioner,

-versus-

CTA CASE NO. 7727

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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SEMIRARA MINING CORPORATION (formerly: SEMIRARA COAL CORPORATION),
Petitioner,

-versus-

CTA CASE NO. 7783

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
FEB 10 2011
9:20 a.m.

x---x

DECISION

MINDARO-GRULLA, J.,

These are consolidated cases of two (2) Petitions for Review separately filed by Semirara Mining Corporation (formerly Semirara Coal Corporation) as petitioner, against the Commissioner of Internal

Revenue (CIR) as respondent, for the Court in Division, pursuant to Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA). Petitioner seeks the issuance of a tax credit certificate or refund of the final value-added tax (VAT) erroneously withheld by the National Power Corporation (NPC) and remitted to the Bureau of Internal Revenue (BIR) on its coal sales for the period covering January 1, 2006 to June 30, 2006 in the amount of P86,108,626.10, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
7727	January 1 to March 31, 2006	P 47,560,418.57
7783	April 1 to June 30, 2006	38,548,207.62
	Total	**P 86,108,626.19**

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 2nd Floor, DMCI Plaza, 2281 Chino Roces Avenue, Makati City, Metro Manila.[1] It is registered with the BIR as a non-VAT enterprise engaged in the coal mining business, with Taxpayer Identification No. (TIN) 000-190-324-000 and OCN 8RC0000018119.[2] C

[1] Par. 1, The Facts, Joint Stipulation of Consolidated Facts and Issues (JSCFI), Docket, p. 237.
[2] Exhibit "A".

Respondent is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Diliman, Quezon City.[3]

On July 11, 1977, petitioner's predecessors-in-interest, Vulcan Industrial and Mineral Exploration Corporation and Sulu Sea Oil Development Corporation, entered into a Coal Operating Contract (COC) with the Philippine Government, through the Energy Development Board (EDB) of then Ministry of Energy, pursuant to Presidential Decree (PD) No. 972.[4] Subsequently, the COC and all the rights, privileges and obligations appurtenant thereto were transferred to Semirara Coal Corporation (SCC) by virtue of a Deed of Assignment[5] dated April 7, 1980. The term of the COC is until the year 2012[6].

The COC implements the declared state policy stated in PD No. 972 to accelerate the exploration, development, exploitation, production, and utilization of the country's coal resources. In line with this policy, Section 16 of the said Decree provided for various incentives to operators. Section 16 reads in part as follows: L

> "Section 16. Incentives to Operators. — The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:
>
> a) Exemption from all taxes except income tax;

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[3] Par. 2, The Facts, JSCFI, Docket, p. 237.
[4] Exhibit "B".
[5] Exhibit "C".
[6] Exhibit "D".

b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts and materials required for the coal operations subject to the following conditions:"

The foregoing provision was in turn incorporated in the terms and conditions of the COC, as amended, to wit:

"SECTION V - RIGHTS AND OBLIGATIONS OF THE PARTIES

xxx xxx xxx

5.2. The OPERATOR shall have the following rights:
a) Exemption from all taxes (national and local) except income tax;

xxx xxx xxx"

Petitioner sells its coal production, under the COC, to the NPC, a government-owned and controlled corporation, pursuant to a Coal Supply Agreement[7] executed between the NPC and petitioner in 1995.

Petitioner allegedly had been selling coal to the NPC for years without payment of the VAT, pursuant to the exemption granted under PD No. 972, as amended, which is embodied in the COC, as amended and as provided for under Section 109 of the National Internal Revenue Code (NIRC) of 1997 (prior to its amendment under Republic Act No. 9337), *viz.*:

"SEC. 109. *Exempt Transactions.* — The following shall be exempt from the value-added tax:

xxx xxx xxx

[7] Exhibit "U".

> (e) Sale or importation of coal and natural gas, in whatever form or state, and petroleum products (except lubricating oil, processed gas, grease, wax, and petrolatum) subject to excise tax imposed under Title VI;
>
> xxx xxx xxx
>
> (q) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529 and 1590;
>
> xxx xxx xxx"

When Republic Act (RA) No. 9337 became effective on November 1, 2005, Section 109(E) was deleted from the NIRC of 1997. As a result, the NPC began to withhold a final VAT of five percent (5%) on coal billings of petitioner, on the ground that petitioner's coal sales are no longer exempt from VAT, pursuant to Section 114(C) of RA No. 9337, which states:

> "(C) *Withholding of Value-added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: xxx
>
> The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made."

Petitioner allegedly filed a protest on the withholding made by the NPC and thus filed a request for a BIR ruling with the Commissioner of Internal Revenue to confirm that the sale of coal made by petitioner £

is still exempt from VAT, notwithstanding the amendments to the NIRC of 1997 by RA No. 9337.

On March 7, 2007, the BIR issued BIR Ruling No. 006-2007[8], confirming the position of petitioner that its sale of coal remains exempt from VAT, to wit:

> "xxx xxx xxx
>
> In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, SMC's sales of coal produced by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109(k) of the Tax Code, as amended by R.A. 9337, in relation to PD 972, as amended."

On May 21, 2007, petitioner filed with the Revenue District Office No. 121 (RDO 121), Large Taxpayer's Division (LTAD) of the BIR, a letter requesting for the issuance of a tax credit certificate in the amount of P163,361,725.37, allegedly representing final withholding VAT on petitioner's coal sales covering the period January to December 2006, which the NPC erroneously withheld and remitted to the BIR.[9]

On January 21, 2008, the aforesaid request was amended to reflect the correct amount of final VAT withheld for the year 2006, amounting to P163,361,871.58, based on certifications provided by the NPC.[10]

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[8] Exhibit "I".
[9] Exhibit "J".
[10] Exhibit "L".

On January 29, 2008, petitioner filed a letter with the BIR Large Taxpayer's Division to follow-up its pending claim for the issuance of a tax credit certificate for the year 2006, drawing particular attention to the amount of VAT withheld by the NPC for the first quarter of 2006 in the amount of P47,560,418.57, considering that the two-year prescriptive period for filing a judicial claim for refund or issuance of a tax credit certificate for January 2006 was about to expire.[11]

There being no immediate action on the claim from respondent and in order to toll the running of the two (2)-year prescriptive period within which to file a judicial claim for refund, petitioner elevated its claim for the first and second quarters of 2006 in the respective amounts of P47,560,418.57 and P38,548,207.62 or a total of P86,108,626.19, before this Court by way of separate Petitions for Review filed on the following dates:

CTA Case No.	Date of Filing of Petition for Review	Period Covered	Amount of Claim
7727	February 4, 2008	Jan. 1 to Mar 31, 2006	P 47,560,418.57
7783	May 6, 2008	April 1 to June 30, 2006	38,548,207.62
		Total	**P 86,108,626.19**

Respondent interposed the following Special and Affirmative Defenses in his Answer for CTA Case No. 7727[12] and CTA Case No. 7783[13] on April 15, 2008 and June 16, 2008, respectively:

[11] Exhibit "N".
[12] Docket, pp. 109 to 117.

"5. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by respondent;

6. To support its claim, it is imperative for the petitioner to prove the following, viz:

a.) The registration requirements of a value-added taxpayer in compliance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, and Section 236 of the Tax Code, as amended;

b.) The invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c.) Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above stated requirements warrants the dismissal of the petition for review;

d.) That petitioner's administrative and judicial claims for tax refund was (sic, were) filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

7. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in

[13] Docket, pp. 122 to 129.

accordance with law and the rules and regulations, and the burden to prove otherwise is upon the petitioner;

8. Republic Act No. 9337 otherwise known as the 'New Expanded Value-Added Tax' states the following exempt transactions, to wit:

xxx xxx xxx

9. Upon careful perusal of the above-quoted provision of the (sic) Republic Act No. 9337, said act already amended certain provisions of the National Internal Revenue Code of 1997 (R.A. 8424) particularly on Value Added Tax (VAT). The said act deleted among others; the provision which grants the tax exemption to the petitioner under R.A. 8424 regarding the 'sale or importation of coal and natural gas, in whatever form or state;

10. It is worthy to note that a number of exempt transactions from VAT under R.A. 8424 were not included or adapted as exempt transactions in the New Expanded VAT law (R.A. 9337) and this only shows the intention to subject these transactions including the sale or importation of coal and gas, the subject of the instant petition, into Value-Added Tax (VAT). Otherwise, if it is indeed the intention of the legislature to include the same under the exempt transactions, it should have restated the same under the New Expanded VAT law as what was done with the other exempt transactions;

11. *Expressio unius est exclusio alterius*. Under this legal maxim in statutory construction, the express mention of one thing in law means the exclusion of others not expressly mentioned. Thus, the omission of 'sale or importation of coal and natural gas, in whatever form or state' from the exempt transactions under the New Expanded VAT Law only means that the same is subject to Value-Added Tax;

12. Petitioner also seeks tax exemption under the guise that the same was granted under a special law. However, in an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims

exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications;

13. The claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation and liberally in favor of the taxing authority;

14. As to the allegations of petitioner that its tax exemption is protected by the non-impairment of the obligation contract clause of the Constitution, the same is misplaced as the tax exemptions granted under a legislative franchise are subject to the condition that the same shall be subject to amendment, alteration or repeal by Congress and when the common good requires;

15. Based from the foregoing, the petitioner's claim for tax refund and/or credit has no basis in fact and in law, hence the instant petition should be dismissed for absence of cause of action."

On July 8, 2008, petitioner filed "Motions for Consolidation and Correction"[14] for the consolidation of CTA Case No. 7783, which was pending before the First Division of the Court, with CTA Case No. 7727, pending before the Second Division of the Court, since these cases involve the same parties and issues; and for the amendment of the name of petitioner in the caption from "Semirara Coal Corporation" to "Semirara Mining Corporation" to reflect petitioner's existing corporate name.

[14] CTA Case No. 7783, Docket, pp. 150-156.

In the hearing held on July 11, 2008[15] and confirming Resolution[16] dated July 25, 2008, this Court's First Division granted the Motion for Consolidation subject to the conformity of this Court's Second Division. Likewise, this Court's First Division approved the change in petitioner's name in CTA Case No. 7783 from "Semirara Coal Corporation" to "Semirara Mining Corporation".

On August 4, 2008, this Court's Second Division issued a Resolution stating its conformity to the consolidation of the subject cases.[17]

On August 26, 2008, petitioner filed its Motion for Correction[18] to seek the correction or amendment of its name in the caption of CTA Case No. 7727 to "Semirara Mining Corporation" to reflect its existing corporate name. The said Motion was granted by this Court in a Resolution[19] dated September 2, 2008.

During trial, petitioner presented documentary and testimonial evidence which includes that of witnesses Junalina S. Tabor, Amorlina R. Matulac, and Myra Celeste O. Dabalos. Thereafter, petitioner filed its Formal Offer of Evidence[20] on May 20, 2009, submitting Exhibits "A" to

[15] CTA Case No. 7783, Docket, p. 174
[16] CTA Case No. 7783, Docket, p. 175.
[17] CTA Case No. 7727, Docket, p. 180.
[18] CTA Case No. 7727, Docket, pp. 181-183.
[19] CTA Case No. 7727, Docket, p. 215.
[20] CTA Case No. 7727, Docket, pp. 321 to 334.

"FF", inclusive of sub-markings. In a Resolution[21] dated June 22, 2009, the afore-mentioned exhibits were admitted, except for Exhibits "B" and "C" on ground of petitioner's failure to identify them during trial. On July 8, 2009[22], petitioner moved for the reconsideration of a Resolution dated June 22, 2009, regarding the non-admission of Exhibits "B" and "C"; which this Court granted in the Resolution[23] issued on the same date.

Respondent likewise filed his Formal Offer of Evidence[24] on December 8, 2009, which was admitted by this Court in a Resolution[25] dated January 21, 2010.

On March 3, 2010, the instant cases were submitted for decision, taking into consideration the parties' Memoranda filed on February 23, 2010 for petitioner and on February 26, 2010 for respondent.

In their Joint Stipulation of Consolidated Facts and Issues, the parties submitted the following issues for this Court's resolution:

> "1. Whether or not petitioner is entitled to a tax refund in the amount of EIGHTY-SIX MILLION ONE HUNDRED EIGHT THOUSAND SIX HUNDRED TWENTY-SIX PESOS AND TEN CENTAVOS (P86,108,626.10) erroneously withheld by NPC for the period January 1, 2006 to June 30, 2006.

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[21] CTA Case No. 7727, Docket, pp. 338 to 339.
[22] CTA Case No. 7727, Docket, p. 342.
[23] CTA Case No. 7727, Docket, p. 343.
[24] CTA Case No. 7727, Docket, pp. 357 to 359.
[25] CTA Case No. 7727, Docket, pp. 367 to 368.

2. Whether or not petitioner filed the Petition for Review within the prescribed period in accordance with Section 112(D) of the 1997 NIRC.

3. Whether or not petitioner's claim for tax refund/credit was filed within the two-year (2) prescriptive period in accordance with Section 112(A), (B) and (D) and Section 229 of the 1997 National Internal Revenue Code."

Before discussing the merits of petitioner's claims, this Court finds it appropriate to determine first the timeliness of the filing of the instant claims considering that claims which are filed beyond the reglementary period will not prosper.

Respondent, in his Memorandum, alleges that the judicial claims for refund under CTA Case Nos. 7227 and 7783 filed on February 4, 2008 and May 6, 2008, respectively, had already prescribed since "(p)etitioner filed its administrative claim for refund on 19 May 2007." Under Section 112(D) of the NIRC of 1997, respondent has one hundred twenty (120) days within which to process claims for refund of unutilized input tax; then petitioner has thirty (30) days to appeal the full or partial denial of the claim or the inaction of respondent. For easy reference Section 112(D) of the NIRC of 1997, is hereby quoted as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> xxx xxx xxx
>
> (D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date

> of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof."

This Court disagrees with respondent.

It must be emphasized that Section 112(D) of the NIRC of 1997, in relation to Sections 112(A) and (B) of the same Code, pertains to tax refund or credit of **unutilized input taxes** by VAT-registered persons (a) arising from their purchases of goods and services attributable to zero-rated or effectively zero-rated sales or (b) upon retirement from or cessation of business, or due to changes in or cessation of status. Thus, Section 112(D), in relation to Sections 112(A) and (B) of the NIRC of 1997, is inapplicable to the instant claims since petitioner is registered as a non-VAT enterprise and the subject matter of the claims for refund refers to **output VAT** on petitioner's VAT-exempt sale of coal erroneously withheld by the NPC pursuant to Section 114(C) of the NIRC of 1997.

The pertinent provisions applicable to the instant cases are Sections 204(C) and 229 of the NIRC of 1997, as amended, which are quoted herein below:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or

change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Clearly, the law mandates that both the administrative and judicial remedies of filing a claim for refund of erroneously paid tax must be done within two (2) years from the payment of the tax.

The instant claims pertain to final withholding VAT, which must be remitted within ten (10) days following the end of the month when the withholding was made pursuant to Section 114(C) of the NIRC of 1997, as amended, to wit:

"SEC. 114. *Return and Payment of Value-added Tax.* -

xxx xxx xxx

(C) *Withholding of Value-added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided*, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made."

In keeping with Section 114(C), the NPC remitted to the BIR the final withholding VAT on the following dates:

Exhibit	Period Covered	Date of Filing of Return/Payment of Tax
AA-1, AA-1-a	January 2006	February 10, 2006
AA-2, AA-2-a	February 2006	March 10, 2006
AA-3, AA-3-a	March 2006	April 10, 2006
AA-4, AA-4-a	April 2006	May 10, 2006
AA-5, AA-5-a	May 2006	June 9, 2006
AA-6, AA-6-a	June 2006	July 10, 2006

Counting from February 10, 2006, petitioner had until February 10, 2008 at the earliest within which to file its claims both in the administrative and judicial levels. Therefore, the original administrative claim filed on May 21, 2007[26], the amended administrative claim filed

[26] Exhibit "J-1".

on January 21, 2008[27], and the Petitions for Review filed on February 4, 2008[28] and May 6, 2008[29] fell within the two-year prescriptive period.

Finding that the cases were filed within the reglementary period, this Court shall resolve the principal issue which is - whether petitioner is entitled to the tax refund amounting to P86,108,626.10 claimed to be erroneously withheld by the NPC for the period covering January 1, 2006 to June 30, 2006.

Petitioner argues that it is entitled to a refund pursuant to PD No. 972 and Section 109(k) of RA No. 9337, and its exemption from which the refund is based was confirmed by no less than the respondent in BIR Ruling No. 006-07.

Respondent, however, claims that RA No. 9337 deleted the exemption under Section 109(e) of the NIRC of 1997, which granted petitioner's exemption from VAT. Accordingly, he argues that petitioner's sale or importation of coal and natural gas, in whatever form or state, is subject to VAT.

Petitioner's argument is meritorious.

The issue is not novel. In a number of decisions involving the same parties and issue but different taxable years, this Court had ruled that based on Section 109(k) of RA No. 9337, petitioner is entitled to an

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[27] Exhibit "L-1".
[28] CTA Case No. 7727.
[29] CTA Case No. 7783.

exemption from VAT as provided under a special law, specifically, PD No. 972[30].

PD No. 972 is a special law, the spirit of which is to accelerate the exploration, development, exploitation, production and utilization of the country's coal resources, and to provide incentives not only to coal users, but more importantly, to operators of coal operating contracts. In order to encourage and promote said policy, the law provided a tax incentive which expressly grants to operators of a contract under said Decree exemption from all taxes except income tax, thus:

> "SECTION. 16. *Incentives to Operators.* — The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:
>
> (a) *Exemption from all taxes except income tax;*"

Hence, petitioner, as an operator under its Coal Operating Contract[31], is entitled to exemption from both local and national taxes, except income taxes.

Pertinent is the disquisition in the case of *Semirara Mining Corporation vs. Commissioner of Internal Revenue*[32], to wit:

> "We agree with petitioner.

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[30] Presidential Decree No. 972, Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal.
[31] Exhibit "E".
[32] CTA Case No. 7727, October 13, 2009.

The inherent power of the state to impose taxes includes the power to grant tax exemptions. Tax exemptions may be granted either by the Constitution or by an act of legislature, subject to limitations as the Constitution may provide.

The tax exemption being availed of by the petitioner is a tax exemption granted by an act of legislature, which is, P.D. No. 972. Under Section 16 of the said law, operators of coal operating contracts are given various incentives, which include exemption from all taxes except income tax. Furthermore, the said incentive or tax exemption provided for by P.D. 972 was embodied and incorporated in Section 5.2 of the Coal Operating Contract between petitioner and the Philippine Government. In the present case, the petitioner is seeking exemption from VAT. As provided under Section 21 of the 1997 Tax Code, VAT is one of the national internal revenue taxes, hence, exemption from VAT falls within the exemptions provided by P.D. 972 and its Coal Operating Contract. Furthermore, petitioner's claim for exemption from payment of the VAT is also covered by the 1997 Tax Code notwithstanding its amendment by R.A. 9337, as provided by Section 109 (K), which reads as follows:

> **'REPUBLIC ACT NO. 9337**
> **AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES**
>
> **Sec. 7.** Section 109 of the same Code, as amended, is hereby further amended to read as follows:
>
> SEC. 109. *Exempt Transactions.* — (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529;
>
> xxx xxx xxx'

L

> **Based on the aforequoted provision of Section 109, petitioner is entitled to exemption from VAT since its sale of coal is exempted from VAT as provided under a special law, which is PD 972.**" (*Emphasis supplied*)

As to respondent's allegation that Section 24 of RA No. 9337 repealed the tax exemption under PD No. 972, significant is this Court's ruling in *Semirara Mining Corporation vs. Commissioner of Internal Revenue*[33], which laid to rest the issue by declaring that petitioner's tax exemption under PD No. 972 still subsists, *viz*:

> "As regards the alleged repeal of the provisions pertinent to this case, which according to respondent effectively removed petitioner's exemption from VAT, the repealing clause of RA 9337, Section 24 pertinently states:
>
> > 'Sec. 24. Repealing Clause. — The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
> >
> > (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
> > (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and
> > (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.'
>
> Indeed, there is no indication that RA 9337 repealed PD No. 972 or any section or paragraph thereof, whether express or implied. It has been ruled that a special law such as PD No. 972 cannot be repealed, amended or altered by a subsequent general law by mere implication. If the intent to repeal is not

[33] CTA Case No. 7867, January 4, 2011.

clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act. The legislature is presumed to know the existing laws; if it intended a repeal of the earlier law, it should have so expressed that intention in the subsequent statute. Thus, a statute will not be deemed to have been impliedly repealed by another enacted subsequent thereto unless there is a showing that a plain, unavoidable and irreconcilable repugnancy exists between the two. Absent an express repeal, as in this case, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws. An express repeal, is one wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed. Absent this specific requirement, an express repeal may not be presumed.

There being no plain and irreconcilable repugnancy between the relevant provisions of the pertinent laws and considering that the repealing clause of R.A. No. 9337, specifically Section 24 thereof did not expressly include P.D. 972 in its enumeration of repealed laws or provisions, it is plain that the latter has not been repealed by R.A. No. 9337 and petitioner may still invoke in its favor VAT exemption under the COC." *(Emphasis supplied)*

It is noteworthy that in BIR Ruling No. 006-07, respondent admitted petitioner's exemption from VAT pursuant to Section 16 of PD No. 972, to wit:

"In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, SMC's (petitioner's) sales of coal produced by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109 (k) of the Tax Code, as amended by RA 9337, in relation to PD 972, as amended."

Respondent, therefore, cannot just change his mind on an opinion on which petitioner has relied. In summary, petitioner is exempted from the payment of VAT.

Petitioner proffered various documents to substantiate its claim that the NPC withheld and remitted to the BIR five percent (5%) final withholding VAT on its gross payments for coal purchases from petitioner for the period from January 1, 2006 to June 30, 2006. Among the documents presented were:

(a) Monthly Remittance Return of Value-added Tax and other Percentage Taxes Withheld (BIR Form No. 1600) filed by the NPC with the BIR for the months of January 2006 to June 2006;[34]

(b) Alphabetical List of Payees from whom Taxes were Withheld (BIR Form No. 1600-Schedule II) filed by the NPC with the BIR for the months of January 2006 to June 2006;[35]

(c) Revenue Official Receipts (BIR Form No. 2524);[36]

(d) Certificates of Final Tax Withheld at Source (BIR Form No. 2306) issued by the NPC to petitioner;[37]

(e) NPC's "Certification" dated December 10, 2007, certifying the amount of final VAT withheld by the NPC from its gross payments made to petitioner from January 1, 2006 to June 30, 2006;[38] and

(f) Comparison of VAT Withheld per NPC Alphalist against BIR Form 2306 for the months of January 2006 to June 2006[39].

A scrutiny of these documents shows that the total final VAT withheld, as reflected in the Monthly Remittance Returns/Alphalist, in

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[34] Exhibits "AA-1" to "AA-6".
[35] Exhibits "AA-1-b" to "AA-6-b".
[36] Exhibits "AA-1-a" to "AA-6-a".
[37] Exhibits "Z-1-1" to "Z-1-61", "Z-2-1" to "Z-2-68", "Z-3-1" to "Z-3-58", "Z-4-1" to "Z-4-29", "Z-5-1" to "Z-5-49", and "Z-6-1" to "Z-6-71".
[38] Exhibits "F", "G", "H", "R", "S", and "T".
[39] Exhibits "BB-1" to "BB-6".

the amount of P86,106,632.15 is higher by P1.18 when compared with the total final VAT withheld indicated per certificates in the amount of P86,108,630.97, as shown below:

Period Covered	Exhibit	Per Monthly Remittance Returns/Alphalist	Per Certificates	Difference
January 2006	BB-1	P 16,652,595.00	P 16,652,595.01	P (0.01)
February 2006	BB-2	15,547,512.63	15,547,511.34	1.29
March 2006	BB-3	15,360,310.93	15,360,310.98	(0.05)
April 2006	BB-4	4,758,980.34	4,758,980.35	(0.01)
May 2006	BB-5	15,793,041.68	15,793,041.72	(0.04)
June 2006	BB-6	17,996,191.57	17,996,191.57	-
Total		**P 86,108,632.15**	**P86,108,630.97**	**P 1.18**

As found by the Court-commissioned Independent Certified Public Accountant (CPA), the P1.00 difference pertains to the over-remittance made by the NPC for the month of February 2006, particularly for the final withholding VAT shown per certificate marked as Exhibit "'Z-2-58".[40] The remaining difference of P.18 is due to rounding off.

In fine, this Court finds petitioner as having substantiated its claimed final withholding VAT in the amount of P86,108,630.97. However, this Court grants the lower amount of P86,108,626.10 that was prayed for in the consolidated Petitions for Review.

WHEREFORE, the instant Petitions for Review are hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND or to ISSUE A**

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[40] Exhibit "X", p. 3.

TAX CREDIT CERTIFICATE in favor of petitioner in the amount of **EIGHTY-SIX MILLION ONE HUNDRED EIGHT THOUSAND SIX HUNDRED TWENTY-SIX and 10/100 PESOS (P86,108,626.10)**, representing 5% final VAT on its coal sales, which the National Power Corporation erroneously withheld and remitted to the BIR for the period covering January 1, 2006 to June 30, 2006.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice