LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARCOPPER MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4950

JOSE U. ONG, COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 23 1996

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# DECISION

This case involves petitioner's claim for refund or tax credit of unapplied input value added tax from its output value added tax for the year 1991.

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is primarily engaged in the business of producing and exporting copper concentrates subject to a zero-rate value added tax. It is duly registered with the Board of Investment (BOI) as an Export Producer (Exhs. B and A). It is also a VAT registered enterprise having been issued a VAT Registration Certificate No. 32-2-001014 (Admitted in Respondent's Answer). Being a VAT registered enterprise and an

Export Producer, petitioner is subject to the 0% VAT pursuant to Section 100(a)(1) of the National Internal Revenue Code.

For the year 1991, petitioner's sales amounting to US$13,786,830.60 or P383,466,146.97 were all made in favor of Philippine Association of Smelters and Refiners Inc. (PASAR). Petitioner regularly filed its Quarterly VAT Returns for said year. Unable to apply the input VAT on its domestic purchases and importation from the 0% output VAT, petitioner applied for a tax credit or refund with the BIR in the sum of P37,493,573.83, itemized as follows:

| Year-1991 | Period Covered | Application for Tax Credit/ Refund filed on | Unapplied Input VAT |
|---|---|---|---|
| 1st Qtr. | Jan. - March | March 31, 1992 | P 7,614,337.33 |
| 2nd Qtr. | April - June | March 31, 1992 | 10,698,884.82 |
| 3rd Qtr. | July - Sept. | Jan. 22, 1993 | 9,903,671.55 |
| 4th Qtr. | Oct. - Dec. | Jan. 22, 1993 | 9,276,680.13 |
| | Total | | P37,493,573.83 |

Of the total input VAT of P37,493,573.83, P29,949,910.83 represents petitioner's input VAT for its domestic purchases and P7,543;663.00 for its importations.

On February 4, 1993, petitioner filed a petition with this Court seeking for the refund of the input taxes, not applied against any output tax for 1991, in the sum of P37,493,573.83. An investigation was conducted by respondent's revenue officers regarding petitioner's administrative claim for refund or tax credit. It was found that petitioner is entitled to the refund or tax credit of P28,074,765.90, computed as follows:

| | |
|---|---|
| Total Input Tax Claimed | P37,493,573.83 |
| Less: Disallowances of input tax due to non-compliance on invoicing requirements | 230,086.54 |
| Allowable Input Tax | P37,263,487.29 |
| Less: Input Tax Attributable to percentage of PASAR's local sales | 8,969,321.39* |
| Output tax on deemed sale transactions (P2,194,000.00 x 10%) | 219,400.00 |
| Recommended amount for TCC | P28,074,765.90 |

* Computed as:

| | |
|---|---|
| Allowable input tax | P37,263,487.29 |
| Multiplied by the Percentage of local sales of PASAR | x 24.07% ** |
| Input Tax attributable to the local sales of PASAR | P 8,969,321.39 |

** Based on PASAR's percentage of local sales for the year 1991 as certified by the Board of Investment (BOI). PASAR's local sales is 24.07% and 75.93% for export sales.

On January 19, 1994, respondent approved and issued in the name of petitioner a Tax Credit Certificate (SN 002165) in the amount of P20,531,102.90, representing the input VAT paid on its domestic purchases for the year 1991 (Exh. E). However, with respect to the P7,543,663.00 input VAT paid on its importation, respondent wrote a letter addressed to the Commissioner of the

Bureau of Customs authorizing him to issue in favor of petitioner a Tax Credit Certificate in the amount of P7,543,663.00, pursuant to their agreement, dated April 8, 1988. On March 24, 1994, the Commissioner of Customs approved the issuance of a Tax Credit Certificate in favor of petitioner in the amount of P7,543,663.00 (Exh. H). Thus, the total amount of P28,074,765.90 has been awarded to petitioner by way of a tax credit. Petitioner now limits its appeal with regard to the disallowed input tax of P8,969,321.39, representing 24.07% of its input VAT attributable to the local sales of PASAR. Petitioner claims that it is still entitled to a tax credit of P8,969,321.39 on the following grounds:

> "a. The sales to PASAR of copper concentrates by petitioner are treated as export sales pursuant to Article 23 of the Omnibus Investment Code of 1987 (Executive order No. 226). Therefore, petitioner is entitled to zero rate (0%) output VAT and to the refund of input taxes for such zero rated sales of goods pursuant to the Tax Code including the implementing Revenue Regulations (RR) No. 2-88 considering that for 1991 PASAR actually exported more than 70% (actually 75.93%) of its manufactured goods as confirmed by respondent's examiners;
>
> b. The disallowance by petitioner of input tax corresponding to the percentage of PASAR's local sale is not authorized under RR No. 2-88; and
>
> c. The raw materials (copper concentrates) supplied or sold by petitioner to PASAR were used in the production of the latter's registered export products, which are actually exported" (Petitioner's Amended Petition for Review, p. 69, CTA record.)

The issue is limited to whether or not the disallowance of P8,969,321.39, equivalent to 24.07% of petitioner's input VAT attributable to the local sales of PASAR, was proper?

Petitioner contended that the provisions of Article 23 of the Omnibus Investment Code of 1987 (Executive Order No. 226) and Section 2 of Revenue Regulations No. 2-88 gives it the right to claim for a tax credit, the input taxes which were not applied to any output VAT. The pertinent portions of Article 23 of E.O. 226 and Section 2 of Rev. Regs. No. 2-88, provide as follows:

> "**Article 23.** <u>'Export sales' shall mean the Philippine port F.O.B. value,</u> determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, <u>of export products exported directly by a registered export producer to another export producer,</u> or to an export trader that subsequently exports the same: x x x."

> "**REVENUE REGULATIONS NO. 2-88**
> (February 15, 1988)
>
> **SUBJECT:** Regulations governing the application of zero-rate exemption on certain transactions related to exporters, and refunds of input taxes.
>
> **SECTION 1.** ***Purpose.*** - x x x.
>
> SEC. 2. ***Zero-rating.*** - **(a)** ***Sales of raw materials to BOI- registered exporters.*** - Sales of raw materials to export-oriented BOI-registered enterprises whose export sales, under rules and regulations of the Board of Investments, exceed seventy percent (70%) of total annual

> production, shall be subject to zero-rate under the following conditions:
>
> (1) The seller shall file an application with the BIR, ATTN.: VAT Division, applying for zero-rating for each and every separate buyer, in accordance with Section 8(d) of Revenue Regulations No. 5-87. The application should be accompanied with a favorable recommendation from the Board of Investments.
>
> (2) The raw materials sold are to be used exclusively by the buyer in the manufacture, processing or repacking of his own registered export product;
>
> (3) The words "Zero-Rated Sales" shall be prominently indicated in the sales invoice. The exporter (buyer) can no longer claim from the Bureau of Internal Revenue or any other government office tax credits on their zero-rated purchases;"

Petitioner's sales for 1991 were all made to PASAR. PASAR is a duly registered BOI export producer. For the year in question, PASAR had exported 75.93% of its manufactured goods. Petitioner professed that since more than 70% of PASAR's goods were exported then the sale of raw materials to PASAR are deemed to be "export sales" under Article 23 of the Omnibus Investment Code of 1987. These are therefore considered zero-rated sales under Section 2 of Rev. Regs. No. 2-88. Being zero-rated, petitioner claims it has the right to apply for a tax credit of the unapplied input taxes for the same year.

An examination of the pertinent provisions of Sections 100(a), 106(a) and (b) of the National Internal Revenue Code, relevant to this case, provide as follows:

> "SEC. 100. ***Value-added tax on sale of goods.*** - (a) ***Rate and base of tax*** - There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the following sales by VAT-registered persons shall be subject to 0%:
>
> (1) Export sales; and
> (2) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subject such sales to zero rate.
>
> "Export Sale" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. "Foreign currency denominated sales", means sales to non-residents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines."

> "SEC. 106. ***Refunds or tax credits of input tax*** - (a) ***Export Sales.*** - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the

> input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
>
> (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."

In a more recent case involving the same parties and under similar circumstances, the Court hereby follows and adopts its previous ruling in **MARCOPPER MINING CORPORATION vs. JOSE U. ONG, Commissioner of Internal Revenue, CTA Case Nos. 4603 and 4607, October 3, 1995,** herein quoted as follows:

> "From the foregoing, it is indubitably clear that in order for the Petitioner to avail of 'zero-rating' of input taxes, the only requirement to be complied is for it to sell its 'raw materials to export-oriented BOI- registered enterprises whose export sales . . . exceed seventy percent (70%) of total annual production . . .' In other words, the law does not require a one-hundred percent export sales. Hence, local sales in excess of the 70% requirement may be allowed, contrary to the contention of the Respondent. The above requirement, although also subject to the condition that 'the raw materials sold are to be used exclusively by the buyer in the

manufacture, processing or repacking of his own registered export product' yet, in this particular case, was satisfactorily established by the Petitioner through documentary and testimonial evidences. Hence, We cannot do otherwise but grant Petitioner's claim for refund."

Likewise, in this case, Marcopper (a BOI registered enterprise) sold its copper concentrate to PASAR (also a BOI registered export producer) for the year 1991. These copper concentrates have been used as raw materials in the production of goods for export by PASAR. In addition, PASAR had actually exported 75.93% (Exh. I-1) of its manufactured goods in 1991 (Exhs. J and I). Thus, considering that the goods exported by PASAR exceeded 70% of the total annual production, then the sales of Marcopper to PASAR is subject to zero-rate pursuant to Section 2 of Revenue Regulations No. 2-88 (The Application of Zero Rate, Exemption on Certain Transactions Related to Exports and Refunds of Input Taxes). From the evidence presented by petitioner, there is no doubt that it had satisfactorily proven its case.

**WHEREFORE,** finding the petition meritorious, the same is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is hereby ordered to issue a Tax Credit Certificate in favor of petitioner Marcopper Mining Corporation in the amount of P8,969,321.39, representing 1991 input taxes improperly disallowed by the respondent. No pronouncement as to cost.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**I CONCUR:**

**RAMON O. DE VEYRA**
Associate Judge

## CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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