REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BAGUIO GOLD MINING COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2152

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/6/76

D E C I S I O N

Petitioner seeks the refund of ₱52,484.84 representing alleged overpaid ad valorem taxes on the gold extracted or produced by it from April 18, 1962 to January 16, 1967. Petitioner is a domestic corporation with business address at Equitable Bank Building, Juan Luna, Manila. It is engaged in mining operation for the production of gold.

From April 18, 1962 to January 16, 1967, petitioner paid all the ad valorem taxes on the gold extracted or produced by it at the mines. Said taxes were at first collected by respondent at the rate of 1-1/2% based on the world price of gold at $35.00 per ounce set by the Board of Governors of the International Monetary Fund. In effect, at the time material to this case, the standard price of gold in the Philippines is ₱136.50 per ounce considering that the conver -

sion rate of One US dollar is equivalent to ₱3.90. In subsequently computing the 1-1/2% ad valorem tax on gold extracted or produced by petitioner, respondent Commissioner of Internal Revenue added to the "actual market value" of gold the corresponding amount of subsidy received by the petitioner from the Gold Subsidy Board created under Republic Act No. 4859 entitled "An Act to Provide Assistance to the Gold Mining Industry"; which took effect on September 2, 1966. Section 5 thereof provides as follows:

> Sec. 5. Manner of payment under this Act.- (a) Any marginal gold producer shall be entitled to the official price as hereinbefore defined under Section 2(r) plus an assistance of ₱65.00 per ounce from the Government for its production within the effectivity of this Act. (b) In cases of over-marginal gold mine or mines producing gold as by-product, such mines shall be entitled to the official price as hereinbefore defined under Section 2(r) plus an assistance of fifty pesos per ounce from the Government within the effectivity of this Act: Provided, However, That the above provisions notwithstanding, in case of any marginal gold mine the total price, which includes the official price plus the assistance shall in no case exceed ₱120.00 per ounce of gold; Provided, finally, That during the term of this assistance, the gold producer enjoying the same shall give a bonus equivalent to 5% of the

assistance it receives to be distributed among its employees whose salaries do not exceed ₱300.00 per month. (Underscoring supplied)

On December 28, 1967, petitioner, thru the accounting firm of Del Rosario & Co., requested respondent the refund or tax credit of the overpaid ad valorem taxes. On April 24, 1968, petitioner reiterated its request for refund and/or tax credit. Respondent referred petitioner's request to the Regional Director of North Manila. On August 11, 1969, Examiner Deogracias R. Reyes of the said Regional Office, recommended to the respondent Commissioner of Internal Revenue the refund or tax credit of ₱11,895.95 to petitioner, instead of ₱52,484.84, due to the prescriptive period for refund embodied in Section 309 of the National Internal Revenue Code.

On March 1, 1970, however, respondent Commissioner of Internal Revenue denied petitioner's request for refund or tax credit of the alleged overpaid ad valorem taxes. On April 6, 1970, petitioner, thru the accounting firm of Del Rosario & Co., moved for a reconsideration of respondent's decision based on his letter to a firm of public accountants dated February 7, 1967, wherein he ruled that the ad valorem tax on gold should be based on the "actual market value" thereof. (BIR rec., pp. 65-66; CTA rec., pp. 10-11).

On July 9, 1970, petitioner filed its petition for review with this Court alleging, among others, the favorable ruling of said respondent mentioned above. Subsequently, respondent filed his answer to the petition for review alleging by way of special and affirmative defenses that respondent's ruling of February 7, 1967 relied upon by petitioner has already been cancelled and revoked; that the Government is not estopped from collecting taxes due to the error or mistakes of its agent; and that even if petitioner is legally entitled to the refund of the overpaid ad valorem taxes, the amounts paid on account thereof prior to July 9, 1968 cannot be refunded under the provisions of Section 306 of the National Internal Revenue Code.

There are, therefore, two (2) issues submitted to this Court for resolution, namely:

(1) Whether or not the amount of subsidy received by petitioner from the Gold Subsidy Board should be added or included in the official price of gold in computing and imposing the 1-1/2% ad valorem tax prescribed by Section 243 of the National Internal Revenue Code; and

(2) Whether or not petitioner's claim for refund or tax credit filed with this Court has already prescribed under Section 306 of the National Internal Revenue Code.

Section 243 of the National Internal Revenue Code applicable to the case at bar provides as follows:

> "Sec. 243. Ad valorem taxes on output of mineral lands not covered by lease.- There is hereby imposed on the actual market value of the annual gross output of the minerals or mineral products extracted or produced from all mineral lands not covered by lease, an ad valorem tax in the amount of two per centum of the value of the output, except gold which shall pay one and one-half per centum. (Underlining supplied.)

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FIRST ISSUE:

Petitioner vigorously contends that the amount of gold subsidy received by it as producer of gold should not be added or included by the respondent Commissioner of Internal Revenue in computing the 1-1/2 ad valorem tax imposed by Section 243 of the

National Internal Revenue Code, supra, because to do so would contravene the meaning and definition of the phrase "actual market value" of the minerals or mineral extracted or produced from petitioner's mineral land; and defeat the liberal and benevolent purpose for which Republic Act No. 4859 was enacted. In brief, petitioner contends that it was never the intention of the Government to subsidize gold producers and at the same time take away a part of the subsidy by imposing ad valorem taxes thereon.

On the other hand, respondent maintains that the 1-1/2% ad valorem tax imposed by Section 243 of the National Internal Revenue Code, supra, should be based on the official world price of gold at $35.00 per ounce (after converting its equivalent in Philippine peso), plus the amount of subsidy given by law. In support of his stand, respondent cited with approval the provisions of Republic Act No. 1164 otherwise known as "An Act to Provide for Emergency Assistance to Gold Mining Industry of the Philippines." Section 6 thereof provides as follows:

> Sec. 6. Manner of payment under the Direct Short Term Assistance.- (a) Any marginal gold producer shall be en-

> titled to an assistance from the Government sufficient to bring the total, official price plus assistance, to ₱111.72 per ounce for its production within the effectivity of this Act, not to exceed the production during its post-war peak year; Provided, That in case there is excess production, the assistance to be paid on the excess shall be that which will bring the total, official price plus assistance, to ₱105.40 per ounce.
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> (b) In cases of operating gold mines which are over the marginal classification, such mines shall be given an assistance that will bring the total, official plus assistance, to ₱105.40 per ounce. (Underscoring supplied)

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From the provisions of law above-cited, respondent stated that the phrase "sufficient to give the total, official price plus assistance" is indicative that, from the inception of the gold subsidy act, Congress intended and treated the subsidy or assistance to gold producer as part of the official price of gold and, therefore, the 1-1/2% ad valorem tax imposed by Section 243 of the National Internal Revenue Code should be based on the official price of gold plus the amount of subsidy given by the Government.

We cannot subscribe to the theory of the respondent Commissioner of Internal Revenue because Section 243 of the National Internal Revenue Code was promulgated under the taxing power of the State. The principal objective thereof is to raise funds for the support of the Government. On the other hand, Republic Acts Nos. 1164, 3089, 3472, and 4859 dealth with the Government assistance to the gold mining industry and the statement therein that the total value of gold includes the official price thereof and, the subsidy given to the gold producer, does not in any manner implement or amend the definition of the actual market value of gold. Thus, in the cases Frocklich & Kuttner vs. The Insular Collector of Customs and Kuenzle & Streiff v. The Insular Collector of Customs, 18 Phil. 481, our Supreme Court held as follows:

> It is a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out although standing on a close analogy. In every case, therefore, of doubt, such statutes are construed

> most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, beyond what the statutes expressly and clearly import. Revenue statutes are in no just sense either remedial laws, or laws founded upon any permanent public policy, and therefore are not be liberally construed. (See also the ruling in Luzon Stevedoring Co. vs. Trinidad, 43 Phil. 803).

Moreover, an examination of Section 5 of Republic Act No. 3089 which took effect on June 17, 1961 shows that the amount of subsidy given to gold producers is not always a part of the total value of gold because said Section 5 contains the following provisions:

> x x x Provided, finally, That during the term of this Assistance, the gold producer enjoying the same shall give a bonus equivalent to five per cent of the assistance it receives to be distributed among its employees whose salaries do not exceed ₱500.00 per month.

In the light of the foregoing, it cannot validly be said that the actual value of gold imposed by Section 243 of the National Internal Revenue Code includes the amount of subsidy given by the Gold Subsidy Board to the herein petitioner. In fact, the extensive and wholehearted effort of the Government to assist gold producers in the Philippines, instead of giving additional tax burden, is clearly manifested in Section 13 of Republic Act No. 3089, the pertinent portion which reads as follows:

> Sec. 13. Fund to carry out the provisions of this Act.- x x x Provided, That if the amount available in the "Gold Assistance Trust Fund", is not sufficient to provide fully for the assistance to be given to the gold mines under this Act, the Central Bank is further authorized to charge the current account of the National Treasury to make up for the deficiency.

It can thus be seen that the total value of gold mentioned in the various gold subsidy laws as including official price plus assistance has no bearing with the definition of the actual market value of gold found in Section 243 of the National Internal Revenue Code. The clear intention of the Government to subsidize gold producers will be nullified if at the same time the said subsidy is held subject to the ad valorem tax prescribed by Section 243 of the National Internal Revenue Code.

SECOND ISSUE:

Refunds and tax credits of revenue taxes are governed by Sections 306 and 309 of the National Internal Revenue Code which read as follows:

Sec. 306. 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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; 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 begun after the expiration of two years from the date of payment of the tax or penalty.

Sec. 309.- Authority of Commissioner to make compromises and to refund taxes.-

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The authority of the Commissioner of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty.

Interpreting the foregoing provisions on refunds and tax credits in connection with Section 11 of Republic Act No. 1125, our Supreme Court in the case of Gibbs vs. Commissioner of Internal Revenue, L-17406, November 29, 1965, held as follows:

> x x x Sec. 306 of the National Internal Revenue Code should be construed together with Section 11 of Republic Act 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the collector of Internal Revenue within 2 years from the date of his payments of the tax, as required by Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by Section 71, Republic Act No. 1125. If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.

In the case at bar, petitioner filed its claim for refund with the Bureau of Internal Revenue on December 28, 1967. It filed with this Court the judicial action for refund to enforce its claim only on July 9, 1970. Since the last payment of the ad valorem tax, aside from previous payments, was made by petitioner on January 16, 1967, it is clear that petitioner's right to refund has already prescribed.

WHEREFORE, petitioner's claim for the refund of the erroneously paid ad valorem taxes has to be, as it is hereby, denied. Without pronouncement as to costs.

SO ORDERED.

Quezon City, September 6, 1976.

ESTANISLAO R. ALVAREZ
Presiding Judge

WE CONCUR:

AMANTE FILLER
Associate Judge

CONSTANTE C. ROAQUIN
Associate Judge