REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5452

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:
APR 27 1998

x - x

DECISION

The issue as to whether or not the claim for refund and/or tax credit arising from excess input VAT credits for the period January 1, 1995 to June 30, 1995 may prosper is the focus of this petition for review.

Petitioner is a domestic corporation principally engaged in the mining business. It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with VAT Registration No. 31-9-000027.

For the period January 1, 1995 to March 31, 1995, petitioner filed with the BIR its VAT return on April 20, 1995 which return showed zero-rated sales in the amount of ₱888,002,523.67.

As appearing on said return, the current input tax payments on its local purchases of goods and services, as well as on the importation of capital goods is ₱28,677,081.21. After these input taxes were applied against the output VAT due on its taxable sales for the same quarter of ₱18,730,131.38, an excess input VAT credit is reflected thereon in the amount of ₱9,946,949.83.

Consequently, on April 17, 1996, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance an administrative claim for refund/tax credit in the amount of ₱9,930,992.65.

Likewise, for the period April 1, 1995 to June 30, 1995, petitioner filed its VAT return with the BIR on July 20, 1995. Such return shows zero-rated sale in the amount of ₱582,194,797.69 and the current input tax payments on its purchases of goods and services as well as on its importation of capital goods is reflected as ₱21,785,254.47. Applying the latter amount against the output VAT due on its taxable sales of ₱7,586,731.01 gives us the sum of ₱14,198,523.46 as excess input VAT credit. Out of this amount, the excess input tax credit of ₱14,195,106.08 is the subject of a formal claim for refund/tax credit filed by petitioner on June 14, 1996 with the same agency of the Department of Finance.

Considering respondents' inaction and to toll the running of the period prescribed by law to file a claim for refund/tax credit, this petition for review was filed on December 26, 1996.

In the meantime, more particularly, on November 22, 1996, a tax credit certificate was issued by the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance in favor of petitioner in the amount of ₱11,045,703.79. As a consequence thereof, an amended petition for review was filed by petitioner on May 7, 1997. Petitioner now seeks the refund/tax credit of the balance amounting to ₱13,099,769.50 as excess input VAT credit.

Respondents, for their part, filed the corresponding answer and amended answer.

Accordingly, petitioner underwent the process of marking several documents and presenting witnesses to identify some of them. Petitioner was then granted thirty (30) days within which to formally offer its evidence. Counsel for the petitioner requested and was granted by the Court an additional thirty (30) days to file his formal offer of evidence. No formal offer of evidence was filed nor was an explanation given for such failure. Thus, the case was set for hearing for the reception of respondents' evidence.

Respondents deemed it proper not to present any evidence. Instead a dismissal of the case was prayed for due to the failure of the petitioner to prosecute its case. Obviously, no objection was raised on the part of the petitioner for the simple reason that petitioner's counsel was not around.

Hence, the query. Is the petitioner entitled to the relief sought?

We answer in the negative.

Under the Revised Rules of Court, specifically Section 34 of Rule 132, it is provided that:

> **Sec. 34.** ***Offer of Evidence.*** - The Court shall consider no evidence which has not been offered. The purpose for which the evidence is offered must be specified.

It is crystal clear then that evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of a case. This Court has occasion to rule the same in the case of **Tatle Apparel, Mfg. vs. Commissioner of Customs, CTA Case No. 5029, May 30, 1995,** upheld by the Court of Appeals in its resolution dated July 31, 1995 entitled **Tatle Apparel Mfg. vs. CTA, et al., CA-G.R. 37856.** The Supreme Court made the same declaration in **Veran vs. Court of Appeals, No. L-41154, January 29, 1988** and **People vs. Cariño, No. L-73876, September 26, 1988.**

Furthermore, the Supreme Court, in **Tabuena vs. Court of Appeals, G.R. No. 85423, May 6, 1991,** ruled, "The mere fact that a particular document is marked as an exhibit does not mean it has thereby been offered as part of the evidence of a party."

Moreover, in the case of **Interpacific Transit, Inc. vs. Aviles, G.R. No. 86062, June 6, 1990,** the Highest Tribunal had eloquently declared, thus:

> "The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all. In the latter event, the trial court is, under Rule 132, Section 35, not authorized to consider it."

Justice Moran gave the rationale for this rule, to wit:

> "1. ***The offer of evidence; its form.*** - Any evidence which a party desires to submit to the consideration of the court must formally be offered by him. The offer is necessary because <u>it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial."</u> (Underscoring supplied) (Moran, Comments on the Rules of Court, Vol. 6, 1970 Ed., p. 120).

Succinctly put, since no evidence has been offered by the petitioner, nothing is submitted to this Court for consideration.

As adverted to earlier, petitioner's counsel requested for thirty (30) days within which to file his formal offer of evidence. The same was granted by the Court. On October 1, 1997, counsel for petitioner requested for an extension of thirty days to file his formal offer of evidence due to personal reasons. The Court again granted his motion. The sixty (60) days lapsed and no formal offer of evidence was filed, thus this Court has no other recourse but to deny the instant petition for failure to substantiate the claim for refund.

WHEREFORE, the petition is hereby **DENIED** for lack of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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