REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAMAR MINING COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2421

2/1/77

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - x

D E C I S I O N

Subject of the instant appeal is the decision of respondent Commissioner of Internal Revenue assessing petitioner Samar Mining Company, Inc., deficiency *ad valorem* tax in the amounts of ₱18,309.63 and ₱36,497.62 corresponding to the years 1961 and 1962, respectively.

The facts of this case are not in dispute. Petitioner is a duly registered corporation engaged in mining, with mining concessions in Davao, referred to as the Masara Project, producing ore concentrates out of which gold, silver and copper are derived; and in Zamboanga, the Sibuguey Project, which produces iron. These products are all exported to Japan, except its gold produce which are being purchased by the Central Bank of the Philippines pursuant to Section 4 of Republic Act No. 3089, otherwise known as "The Gold Mining Industry Assistance of 1961". This law makes it obligatory for gold producers operating at the time of the approval thereof to sell their gold produce to the Central Bank at the official price provided for under Section 2(r) of the said Act. Under this arrangement the gold producers in return are entitled to a direct assistance from the Government in accordance with the provisions of Section 3 thereof.

In a letter dated April 22, 1964, the Commissioner of Internal Revenue assessed petitioner deficiency ad valorem tax in the amount of ₱18,309.63 for 1961 and the sum of ₱36,497.62 corresponding to the year 1962. The reason for the deficiency assessment, as alleged in the aforesaid communication, is petitioner's failure to include as part of the actual market value of the gold sold to the Central Bank the subsidy received by it under Republic Act No. 3089, thereby resulting in the underpayment of the ad valorem tax, in violation of Sections 242 and 245 of the Tax Code, which is penalized by Section 248 of the same Code. Respondent having

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denied petitioner's protest against the deficiency assessment, petitioner appealed to this Court.

As agreed by the parties, the lone issue tendered for resolution is whether the subsidy received by the gold producer in accordance with Republic Act No. 3089 shall be included as part of the basis of the ad valorem tax imposed by Section 243 of the National Internal Revenue Code, as amended.

It is petitioner's contention that the subsidy given by the Government pursuant to Republic Act No. 3089 should not be considered part of the basis of the ad valorem tax imposed by Section 243 of the Tax Code. It maintains that the subsidy is not included in determining the "actual market value" of the mineral products extracted or produced by petitioner since Republic Act No. 3089 was enacted primarily for the purpose of giving direct assistance to gold producers in the Philippines to enable them to continue operations despite the then current low gold prices, increased costs of production and other prevailing conditions unfavorable to the gold mining industry. The imposition of the ad valorem tax thereon would defeat the very purpose for which the law was enacted since it will result in the

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receipt by petitioner of a subsidy less than what is extended by the law.

Citing Section 5 of Republic Act No. 3089, in relation to Section 6 of Republic Act No. 1164, respondent, however, claims that the intention of the lawmakers in enacting the law seems clear that the economic assistance given to gold producers forms part of the official price of gold, and therefore the <u>ad valorem</u> tax imposed by Section 243 of the National Internal Revenue Code should be based on the official price plus subsidy.

Indeed, the issue is not one of first impression. In Baguio Gold Mining Company vs. The Commissioner of Internal Revenue, CTA Case No. 2152, September 6, 1976, and Benguet Exploration, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 2165, August 31, 1976, where the factual setting is similar to that in the case at bar, this Court ruled that the subsidy received by a gold producer pursuant to Republic Act No. 3089 should not be included as part of the basis of the <u>ad valorem</u> tax imposed by Section 243 of the National Internal Revenue Code. Because of its decisive effects on the instant case, we will quote at length from the decisions.

"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 dealt 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 citiznes, 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 to 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 of 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

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> 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."

Accordingly, the subsidy given by the Government to petitioner for the years 1961 and 1962 pursuant to the provisions of Republic Act No. 3089 should not be included as part of the basis of the *ad valorem* tax imposed by Section 243 of the Revenue Code. The deficiency *ad valorem* tax assessment issued against petitioner in the amounts of ₱18,309.63 and ₱36,497.62 for the years 1961 and 1962, respectively, are cancelled and declared without force and effect.

WHEREFORE, the decision appealed from should be as it is hereby reversed.

SO ORDERED.

Quezon City, February 1, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge