REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2005
(CTA CASE NO. 9133)

-versus-

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

SEMIRARA MINING AND POWER CORPORATION,
Respondent.

Promulgated:

JUN 30 2020 3:47 p.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review[1] seeking nullification of the Decision dated July 27, 2018[2] (Assailed Decision) and Resolution[3] dated January 15, 2019 (Assailed Resolution), all promulgated by the First Division of this Court (Court in Division) in CTA Case No. 9133 entitled "*Semirara Mining and Power Corporation vs. Commissioner of Internal Revenue*" which granted petitioner's claim for refund or issuance of a tax credit certificate in the amount of P27,340,714.00, allegedly representing the Value-Added Tax (VAT) illegally collected from or erroneously paid by petitioner on its importation/partial shipment of diesel.

The dispositive portions of the assailed Decision and Resolution are as follows:

[1] Rollo, CTA EB No. 2005, pp. 7-14, with annexes.
[2] Ibid., pp. 20-42.
[3] Ibid., pp. 43-49.

Decision:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of P27,340,714.00, representing the **VAT** illegally collected from or erroneously paid by petitioner on its importation/partial shipment of diesel.
>
> **SO ORDERED.**"

Resolution:

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the Commissioner of Internal Revenue, Bureau of Internal Revenue, National Office Buiding, Agham Road. Diliman, Quezon City, Metro Manila.

On the other hand, respondent Semirara Mining and Power Corporation (SMPC) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with business address at 2nd Floor, DMCI Plaza, 2281 Don Chino Roces Avenue, Makati City.

THE FACTS

The facts as culled from the Assailed Decision[4] and the records of the case are as follows:

> "On September 2, 2013 *(sic)*,[5] petitioner[6] was assessed and directed to pay VAT on importation on its first partial shipment of fuel (diesoline), which arrived at the Port of Subic. Said assessment was said to be pursuant to Revenue Regulations (RR) No. 2-2012, which is the "Tax Administration Treatment of

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[4] Citations omitted.

[5] The correct date as shown in the Assessment Notice (Exhibit "P-5") is February 9, 2013; Docket, CTA Case No. 9133, p. 757.

[6] Respondent in this case.

Petroleum and Petroleum Products Imported into the Philippines including those coming in through Freeport Zones and Economic Zones and Registration of All Storage Tanks, Facilities, Depots and Terminals."

In a letter dated August 15, 2013, petitioner protested said assessment invoking its tax exemption privilege under Presidential Decree (PD) No. 972, otherwise known as "The Coal Development Act of 1976" , and BIR Ruling No. DA-002-2006, due to its Coal Operating Contract (COC) with the government.

On August 22, 2013, petitioner submitted a Legal Memorandum arguing that RR No. 2-2012 is inapplicable to petitioner's direct importation of petroleum and petroleum products that are intended for use and consumption in its own mining operations.

Considering that the shipment will not be released until taxes thereon are paid and on account of its urgent need for fuel in its mining operations, petitioner was compelled to pay under protest the assessed amount of P27,341,714.00 on September 3, 2013.

On October 3, 2013, petitioner filed before the Regional Trial Court (RTC) of Makati City a Petition for Declaratory Relief against the BIR Commissioner, the Secretary of Finance, and the Commissioner of Customs, Docketed as Special Civil Action No. 131171, seeking declaration from said court that RR No. 2-2012 does not apply to petitioner and that its direct importation of fuel for its own use and consumption are not subject to VAT and excise tax.

During the pendency of Special Civil Action No. 131171, petitioner's second partial shipment of imported fuel arrived at the Port of Subic. Petitioner was assessed for VAT and excise tax in the amount of P24,967,738.55, as indicated in the Bureau of Customs Import Entry and Internal Revenue Declaration (IEIRD) attached to the Tanker Bill of Lading B/L No. ML-6661 covering said shipment.

On October 14, 2013, petitioner filed an Urgent Application for Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction in Special Civil Action No. 131171, praying that respondents therein be enjoined from applying RR No. 2-2012 on fuel importations intended for direct use and consumption, which was granted by the RTC of Makati, Branch 146 on November 18, 2013.

After trial, the RTC of Makati City, Branch 146 granted petitioner's Petition for Declaratory Relief on February 10, 2014 and declared that in view of the tax exemption provided by Presidential Decree No. 972 and the COC, RR No. 2-2012 is inapplicable to petitioner's direct importation of petroleum and petroleum products.

Petitioner then filed a formal claim for refund of the alleged illegally collected VAT with the BIR on May 29, 2015."

Due to the CIR's failure to act on the claim for refund within the reglementary period, respondent Semirara Mining and Power Corporation filed a Petition for Review before the Court in Division on September 1, 2015.

In the Answer filed by the CIR on December 1, 2015,[7] the CIR raised the following as his Special and Affirmative Defenses: (1) Section 16 of Presidential Decree No. 972 (PD 972) has already been repealed; hence, respondent is now liable for Excise Tax and VAT; and (2) RR No. 2-2012 is non-violative of the non-impairment clause of the Constitution.

In the Joint Stipulation of Facts and Issues,[8] the parties agreed that the issue to be resolved by the Court in Division is:

> "Whether Petitioner is entitled to a refund of illegally-collected value-added tax amounting to Twenty-Seven Million Three Hundred Forty-One Thousand Seven Hundred and Fourteen Pesos (Ph27,341,714.00)."

After trial on the merits, and upon submission of the parties' respective memoranda, the case was submitted for decision on August 16, 2017.[9]

On July 27, 2018, the Court in Division rendered the questioned Decision.[10]

On August 17, 2018, the CIR filed a "Motion for Reconsideration Re: Decision dated 27 July 2018."[11]

[7] Docket, CTA Case No. 9133, pp. 409-416.
[8] Ibid., pp. 684-690.
[9] Ibid. p. 1330.
[10] Ibid. pp. 1335-1357.
[11] Ibid. pp. 1358-1364.

On October 1, 2018, SMPC filed its Comment/Opposition (To Respondent's Motion for Reconsideration re: Decision dated 27 July 2018)."[12]

On January 15, 2019, the Court in Division issued a Resolution[13] on the Motion for Reconsideration.

On February 1, 2019, the CIR filed a "Motion for Extension of Time to File Petition for Review"[14] praying for an additional period of fifteen (15) days from February 2, 2019 or until February 17, 2019 within which to file his Petition for Review.

On February 6, 2019, the Court *En Banc* issued a Minute Resolution[15] granting the CIR's "Motion for Extension of Time to File Petition for Review." Hence, the CIR was given until February 17, 2019 within which to file his Petition for Review.

On February 15, 2019, the CIR filed a "Petition for Review."[16]

On March 11, 2019, the Court *En Banc* issued a Resolution[17] ordering the SMPC to file a Comment on the Petition for Review within ten (10) days from notice.

On April 22, 2019, the Court *En Banc* received SMPC's "Comment/Opposition (To Petition for Review dated 15 February 2019)."[18]

On May 22, 2019, the Court *En Banc* issued a Resolution[19] submitting the case for decision.

ARGUMENTS OF THE PARTIES

The CIR argues that SMPC is not entitled to a refund of alleged illegally-collected VAT amounting to Twenty-Seven Million Three Hundred Forty-One Thousand Seven Hundred and Fourteen Pesos (Php27,341,714.00); that Section 16 of Presidential Decree No. 972 (PD 972) has been repealed, hence, SMPC is now liable for excise tax and VAT; that Revenue Regulation (RR) No. 2-2012 is non-violative of the non-impairment clause of the Constitution, it merely prescribed rules and regulations for the effective enforcement of

[12] Ibid. pp. 401-412.
[13] Ibid., pp. 1381-1387.
[14] Rollo, CTA EB NO. 2005, pp. 1-5.
[15] Ibid., p. 6.
[16] Ibid., pp. 7-14 with annexes.
[17] Ibid., pp. 51-52.
[18] Ibid., pp. 53-60.
[19] Ibid., pp. 62-63.

Sections 105, 129 and 131 of the Tax Code; and that it is incumbent upon SMPC to prove that it is entitled to the refund sought.

On the other hand, SMPC counter-argues that the issue repeatedly posed by the CIR has been passed upon and adequately resolved by the Court in the assailed Decision and Resolution; and that SMPC's fuel imports, which are actually, directly and exclusively used in its coal operations are tax exempt pursuant to law and contract.

THE ISSUE

The principal issue to be resolved by the Court *En Banc* is whether or not SMPC is entitled to refund in the amount of Php27,340,714.00, representing the VAT illegally collected from or erroneously paid by SMPC on its importation/partial shipment of diesel.

THE RULING OF THE COURT *EN BANC*

The administrative and judicial claims for refund were timely filed.

The provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, pertinent to claiming a refund of erroneously paid tax are Sections 204(C) and 229, which read as follows:

> "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." *(Emphasis supplied)*

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"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." *(Emphasis supplied)*

Pursuant to the above-mentioned provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with:

(1) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and

(2) that the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The Court shall determine first whether SMPC's claim for refund was timely filed.

In the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*[20], the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the CIR.

[20] G.R. No. 216130, August 3, 2016.

Thus, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[21]

Based on the records of the case, SMPC paid under protest the assessed amount of P27,341,714.00 on September 3, 2013. Thus, counting two years from such date, SMPC had until September 3, 2015, within which to file both its administrative and judicial claims for refund. SMPC filed a formal claim for refund with the Bureau of Internal Revenue (BIR) on May 29, 2015. Since, the BIR failed to act on the claim for refund within the reglementary period, SMPC filed a Petition for Review before the Court in Division on September 1, 2015. Clearly, SMPC's administrative claim and the subsequent appeal before this Court were well within the two-year period prescribed by law.

Whether or not SMPC is entitled to refund of the VAT paid on the importation /partial shipment of diesel in the amount of P27,340,714.00

Petitioner maintains that SMPC is not entitled to refund of VAT because Section 16 of Presidential Decree No. 972 (PD 972) has been repealed, hence, SMPC is liable for VAT.

After consideration, the Court *En Banc* finds petitioner's argument without merit. The Court *En Banc* agrees with the finding of the Court in Division in the assailed Decision that SMPC is a coal mine operator under its Coal Operating Contract. It is exempt from national taxes (including VAT and excise tax), other than income tax, and on duties and taxes on importation of materials required for its operations pursuant to Section 109(k) of the NIRC of 1997, as amended, in relation to Section 16 of PD No. 972.

In the assailed Decision, the Court in Division ruled as follows:[22]

> "Section 109(k) of RA No. 9337 provides that transactions which are exempt under special laws are also exempt from VAT, to wit:
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> "SEC. 109. Exempt Transactions.- (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
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> xxx xxx xxx

[21] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.
[22] Citations omitted.

(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;"

PD No. 972 is a special law which aims 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. To encourage and promote said policy, the law itself provided tax incentives such as exemptions expressly granted to operators of a contract under said Decree by virtue of Section 16 thereof, which reads:

"SECTION 16. Incentives to Operators. – The provision 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;

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

    1) that machinery, equipment, spare parts and materials of comparable price and quality are not manufactured in the Philippines;
    2) that the same are directly and actually needed and will be used exclusively by the operator in its operations or in operation for it by a contractor;
    3) that they are covered by shipping documents in the name of the operator to whom the shipment will be delivered directly by the customs authorities; and
    4) that prior approval of the Energy Development Board was obtained by the operator before the importation of such machinery, equipment, spare parts and materials, which approval shall not be unreasonably withheld; xxx"

Petitioner is an operator under a Coal Operating Contract, where the Philippine government is a signatory. The said tax exemption was embodied in Section V, 5.2 of its COC, 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;
(b) Exemption from all payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts, and materials required for the Coal Operations xxx"

xxx xxx xxx

Respondent, however, contends that Section 16 PD No. 972 was repealed by Section 534 of RA No. 7160, and that Section 193 of the latter withdrew all existing tax exemptions granted prior to its enactment, making petitioner liable for excise tax and VAT on all importations.

As such, respondent imposed VAT on petitioner's importation of 6,176,367 liters of diesel, in the amount of P27, 340,714.00, pursuant to Section 3 of Revenue Regulations No. 2-20012, which was paid by petitioner on September 3, 2013 as evidenced by the corresponding Statement of Settlement of Duties and Taxes and Import Entry and Internal Revenue Declaration.

Respondent's contention is misplaced and its imposition of VAT has no legal basis.

RA No. 7160 (also known as the "Local Government Code of 1991"), which took effect in the year 1992, declared the State's policy that its territorial and political subdivisions shall enjoy genuine and meaningful local autonomy. Sections 193 and 534 of the said law state:

"SEC. 193. *Withdrawal of Tax Exemption Privileges*.- Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

"SEC. 534. *Repealing Clause.* –

xxx xxx xxx

(e) The following provisions are hereby repealed or amended insofar as they are inconsistent with the provisions of this Code: Sections 2, 16 and 29 of Presidential Decree No. 704; Section 12 of Presidential Decree No. 87, as amended; Sections 52, 53, 66, 67, 68, 70, 71, 72, 73, and 74 of Presidential Decree No. 463, as amended; and Section 16 of Presidential Decree No. 972, as amended, xxx"

Corollary thereto, Articles 283 and 474 of the Implementing Rules and Regulations of the Local Government Code of 1991 explain the repeal and withdrawal of exemption in this manner:

"ARTICLE 283. *Withdrawal of Tax Exemption Privileges or Incentives.* – Unless otherwise provided in this Rule, beginning January 1, 1992, **all local tax exemption privileges or incentives granted to and presently enjoyed by any person, whether natural of juridical, including GOCCs, are considered withdrawn**, except the following:

xxx xxx xxx

ARTICLE 474. Repealing Clause. – (a) Except as otherwise provided in this Code, the following are repealed:

xxx xxx xxx

(b) **Insofar as they are inconsistent with the provisions of the Code, the following are repealed, amended, or modified accordingly**:

(1) Sections 2, 16, and 29 of PD 704; Sec. 12 of PD 87, as amended; Sections 52, 53, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of PD 463, as amended; and **Section 16 of PD 972, as amended**; xxx" (*Emphasis supplied*)

Even though Section 16 of PD No. 972 was expressly mentioned in the repealing clause of RA No. 7160, it is evident that the repealed, modified or amended part of PD No. 972 is only that which is inconsistent with the provisions of RA No. 7160, particularly, the exemption on local taxes. Upon the effectivity of RA No. 7160, only the local tax exemption granted to petitioner under PD No. 972 was withdrawn. Therefore, petitioner's exemption from national taxes (including VAT and excise tax) and duties and taxes on importation subsists.

Moreover, records show that respondent confirmed petitioner's exemption from VAT, pursuant to Section 16 of PD No. 972 and Section 4.109-1 (B)(k) of RR No. 16-2005, even after the effectivity of RA No. 7160, through BIR Ruling No. DA-002-2006 dated January 5, 2006, which states:

"Notwithstanding the provisions of Republic Act No. 9337 subjecting the sale or importation of petroleum products, including raw materials for their production to the value-added tax, the importation of SMC of the petroleum product which is considered a necessary ingredient in the exploration, development and exploitation of coal lands, is exempt from the value-added tax pursuant to the provisions of Section 16 of PD No. 972. Moreover, such exemption provided in PD No. 972 is recognized in Section 4.109-1(B)(k) of Revenue Regulations No. 16-2005 which provides:

'SEC. 4.109-1. **VAT Exempt Transactions**.–

xxx

(B) Exempt Transactions. –

xxx

(k) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws except those granted under PD No. 529 – Petroleum Exploration Concessionaires under the Petroleum Act of 1949.' (Emphasis supplied)

In view of the foregoing, this Office hereby confirms your opinion that diesel fuel oils can be imported duty and tax free by Semirara Mining Corporation (SMC)."

Nevertheless, even without the said BIR Ruling, petitioner's claim is anchored upon a valid and existing law and founded on an express grant of exemption.

As regards the CIR's contention pertaining to the application of RR No. 2-2012, this Court finds the same without merit. RR No. 2-2012 contravenes the tax exemption granted to petitioner under PD No. 972 and its COC. Hence, the payment of VAT by SMPC on its importation of diesel is illegal.

In the case of *Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares vs. Representative Carmelo F. Lazatin and Ecozone Plastic Enterprises Corporation,*[23] the Supreme Court declared RR No. 2-2012 unconstitutional. It ruled as follows:

"On the merits of the case, we rule that RR 2-2012 is invalid and unconstitutional because: a) it illegally imposes taxes upon FEZ enterprises, which, by law, enjoy tax-exempt status, and b) it effectively amends the law (i.e., RA 7227, as amended by RA 9400) and thereby encroaches upon the legislative authority reserved exclusively by the Constitution for Congress.

xxx xxx xxx

RR 2-2012 is unconstitutional.

xxx xxx xxx

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[24] In this case, SMPC was able to prove that it is entitled to a refund or issuance of a tax credit certificate representing the Value-Added Tax (VAT) paid by petitioner on its importation/partial shipment of diesel.

In view of the foregoing discussions, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

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[23] G.R. No. 210588, November 29, 2016.
[24] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

WHEREFORE, premises considered, the Petition for Review dated filed on February 15, 2019 is **DENIED for lack of merit.** Accordingly, the assailed Decision dated July 27, 2018 and Resolution dated January 15, 2019 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice