REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED PARAGON MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NOS. 4671 & 4718

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 09 1998

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DECISION

These consolidated cases involve claims for refund/tax credits for the periods February to October 1989 (CTA Case No. 4671) and November 1989 to July 1991 (CTA Case No. 4718) in the aggregate amount of P14,800,657.00 representing alleged excess and unutilized input value-added tax (VAT).

Petitioner is a corporation duly organized and existing under the laws of the Philippines.

Respondent is the Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to decide, approve and grant refunds or tax credits of excess input value-added tax as provided by law.

To simplify the issues to be resolved in this case, on January 21, 1993, petitioner served upon respondent a Request for Admissions and respondent filed her reply thereto on March 26, 1993. The Court in its resolutions, dated June 16, 1993 (p. 96, CTA rec.), September 20, 1993 (p. 111, CTA rec.), and February 17, 1994 (p. 117, CTA rec.), considered the non-production of the BIR records as evidence willfully suppressed and would be adverse if produced. Hence, respondent is considered to have admitted the facts enumerated in the said request which are reproduced below:

> 1. That petitioner used to be known as the United Asia Resources and Geothermal Corporation, and is the survivor of two merging corporations, namely Abcar-Paragon Mining Corporation and United Asia Resources and Geothermal Corporation;
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> 2. That petitioner is primarily engaged in the discovery, exploration, development and exploitation of mineral in all other forms in the Philippines;
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> 3. That petitioner is a value added tax registered taxpayer with VAT Registration No. 32-7004807;
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> 3.1 That petitioner used to adopt and bear VAT Registration No. 32-5-001417 which was the VAT Registration Number of Abcar-Paragon Mining Corporation;
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> 4. That petitioner has been selling gold and other gold products to the Central Bank of the Philippines;
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> 5. That in connection with petitioner's application for VAT tax credit/refund with the BIR covering the period February 1989 to July 1991, petitioner submitted and filed with the BIR the required VAT returns, sales and purchase invoices, official receipts and other documents necessary for the processing of said application;
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> 5.1 That the BIR VAT office has already completed its examination and investigation (pre-audit) of petitioner's application for VAT tax credit/refund for the aforestated period and submitted its formal recommendations in respect thereof;
>
> 6. That petitioner complied with the provisions of Section 230 of the Tax Code, having filed with the BIR the necessary applications for VAT tax credit/refund as admitted by the

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respondent in its Answer to the Petitions for Review.

For the period February to October 1989 (CTA Case No. 4671), petitioner filed its VAT returns and applications for refund/tax credit of VAT paid, detailed as follows:

TAXABLE QUARTERS	DATE FILED	OUTPUT TAX	INPUT TAX	EXCESS INPUT TAX	DATE FILED
Feb.-April 1989	May 8, 1989	P24,954.00	P303,150.00	P278,196.00	Oct. 25,1990
May-July 1989	Aug. 21, 1989	39,862.00	543,937.00	504,075.00	Oct. 25, 1990
Aug.-Oct. 1989	Nov. 20,1989	41,488.00	2,702,631.00	2,661, 143.00	Oct. 25, 1990
			T o t a l	P3,443,414.00	

The Petition for Review relating to the above case was filed on November 20, 1991.

For the period November 1989 to July 1991 (CTA Case No. 4718), the petitioner also filed its VAT returns and applications for refund/tax credit of VAT paid, broken down as follows:

TAXABLE QUARTERS	DATE FILED	OUTPUT TAX	INPUT TAX	EXCESS INPUT TAX	DATE FILED
Nov. 1989-Jan. 1990	Feb. 19, 1990	P74,509.00	P636,597.00	P562,088.00	Oct. 25,1990
Feb.-April 1990	June 20, 1990	42,739.00	1,118,310.00	1,075,571.00	June 3, 1991
May-July 1990	Aug. 20, 1990	49,861.00	1,416,808.00	1,366,947.00	June 3, 1991
Aug.-Oct. 1990	Nov. 20, 1990	56,114.00	2,470,091.00	2,413,977.00	June 3, 1991
Nov. 1990-Jan. 1991	Feb. 20, 1991	23,328.00	1,370,697.00	1,347,369.00	Dec. 3, 1991
Feb.-April 1991	May 20, 1991	43,451.00	2,406,435.00	2,362,984.00	Dec. 23, 1991
May-July 1991	Aug. 19, 1991	49,247.00	2,277,554.00	2,228,307.00	Dec. 23, 1991
			T o t a l	P11,357,243.00	

Petitioner filed its amended VAT returns for the quarters November 1990 to January 1991, February to April 1991 and May to July 1991 on December 3, 1991, December 9, 1991 and December 9, 1991, respectively. Correspondingly, the amended applications for refund/tax credit for the same quarters were filed on the dates indicated above.

The Petition for Review involving the said period was filed on February 20, 1992.

Inasmuch as the two cases involve the same parties and the same legal issues, a Motion to Consolidate was filed by the petitioner on October 19, 1992 and which the Court granted on November 20, 1992.

It should be pointed out that these cases were originally submitted for decision on October 1, 1996 but were instead held in abeyance pending final adjudication of a similar issue by the appellate court or until the appointment of a third member of this Court. (see Resolution, dated January 20, 1997). On June 5, 1997, the Court of Appeals promulgated a decision in the case of Manila Mining Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 38287 which dwelt on the very same issue confronting us in these instant cases, thus it is now proper to decide these cases (consolidated) this instant.

It is the position of petitioner that its sales of gold to the Central Bank qualified as zero-rated. This stand finds support in a letter-confirmation, dated October 10, 1988, from the Bureau of Internal Revenue signed by the then Deputy Commissioner, Victor A. Deoferio, Jr. (CTA rec., p. 8).

To prove its case and in compliance with CTA Circular No. 1-95, petitioner presented a certification by an independent Certified Public Accountant regarding its VAT payments for the period February 1989 to July 1991. The witness, Miss Nancie Rivera, identified said certificate and the summaries of input tax claims as well as the source documents (suppliers' invoices and official receipts) which were pre-marked and submitted to the Court as part of its evidence. She also testified as to the procedure in coming up with the required certification. (See TSN, May 12, 1994.). Another witness, in the person of Mrs. Josephine S. Bernardo, testified that as a result of the examination and investigation conducted by the BIR, petitioner's claims for refund were denied. Instead, assessments and demand letters were issued by the Bureau against the herein petitioner. (TSN, July 20, 1994). Thus, for 1989, a deficiency VAT assessment in the amount of P11,947,764.97 was issued against the petitioner on September 4, 1992. For 1990, petitioner was assessed deficiency VAT in the amount of P8,816,169.39 issued on August 28, 1992 and for 1991, petitioner was assessed deficiency VAT in the sum of P10,474,459.74 issued on October 16, 1992.

Respondent, for her part, presented Mrs. Julieta Supan, BIR Revenue Officer assigned to conduct the investigation relating to petitioner's claim covering the period February 1, 1991 to October 31, 1991. She testified that she recommended on September 23, 1992, for the denial of the claim of petitioner and to effect the assessment and collection of taxes against it (see BIR rec., p. 289). She based her recommendation on VAT Ruling No. 008-92 issued on January 23, 1992 and Revenue Memorandum Order No. 22-92 which declare that sales of gold to the Central Bank are considered as local sales and are subject to 10% VAT. (TSN, June 19, 1995). Respondent did not present any evidence to dispute petitioner's claims for refund for the periods February 1989 to October 1989 and November 1989 to January 1991.

The main issue to be resolved in these consolidated cases is whether or not the sales of gold to the Central Bank by the petitioner for the period February 1989 to October 1991 qualify as zero-rated, thus, entitling the petitioner to the claims for refund/tax credits sought. Corollarily, whether or not VAT Ruling 08-92 and RMO 22-92 can apply retroactively.

The Court of Appeals, in the case of **Manila Mining Corporation versus Commissioner of Internal Revenue**, CA-G.R. SP No. 38287, promulgated on June 5, 1997, was faced with the same issues and ruled in this wise:

> "The law is clear. VAT Ruling 008-92 issued on January 23, 1992 and Revenue Memorandum Order No. 22-92 cannot be applied retroactively to petitioner's sales to the Central Bank from July 1, 1990 to December 31, 1990.
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> In the recent case of Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 117982, February 6, 1997, the Supreme Court citing the cases of Commissioner of Internal Revenue v. Telefunken Semiconductor Philippines, Inc., G.R. No. 103915, 23 October 1995, 249 SCRA 401; Bank of America v. CA, G.R. No. 103092, 21 July 1994, 234 SCRA 302; Commissioner of Internal Revenue v. CTA, No. L-44007, 20 March 1991, 195 SCRA 444; Commissioner of Internal Revenue v. Mega General Merchandising Corp., G.R. No. 69136, 30

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September 1988, 166 SCRA 166; Commissioner of Internal Revenue v. Burroughs, G.R. No. 66653, 19 June 1986, 142 SCRA 324; ABS-CBN v. CTA, G.R. No. 52306, 12 October 1981, 108 SCRA 142, in no uncertain terms, pronounced, "...well-entrenched is the rule that rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers."

Revenue Memorandum Circular No. 59-88, dated December 14, 1988, and BIR Ruling No. 036-90, dated February 14, 1990 considered sales of gold by a VAT registered firm to the Central Bank as export sale subject to zero rate pursuant to E.O. 581 and Section 1690 of CB Circular No. 960.

The retroactive application of VAT Ruling 008-92 deprived petitioner not only of its claim for refund but worse, made petitioner liable for deficiency VAT in the amount of P8,012,213.47."

In a recently decided case entitled **Benguet Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP Nos. 37205, 38959 and 39435, dated July 10, 1998**, the Court of Appeals reiterated the aforequoted ruling in the Manila Mining case in this manner:

> "Previous to the issuance of VAT Ruling No. 008-92 on 28 January 1992, sales of gold to the CB were deemed export sales subject to a 0% rate of VAT. However, upon the issuance of VAT Ruling No. 008-92, said sales of gold to the CB were deemed local sales and imposed a 10% VAT rate. What caused injury and damage to petitioner is the issuance of VAT ruling No. 59-92 providing for a retroactive application of VAT Ruling No. 008-92 to the year 1988. The imposition of a higher VAT rate on petitioner's sales of gold to the CB (10% VAT rate instead of 0%) in effect reduced petitioner's income. This must be so because when petitioner's claims for tax credits were denied citing VAT Ruling No. 008-92 and VAT Ruling 59-92, petitioner suffered financial damage equivalent to the sum of the disapproved claims. Had

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> petitioner known that such sales were deemed local sales and subject to the 10% VAT rate (which rate was not the prevailing rate in 1988) it would have (as it was within its rights to do so) passed on the cost of the input taxes (representing actual payments, costs or expenses in the purchase of goods and services) to the CB. Petitioner did not do that since it relied on the VAT rulings then in effect that the transactions in question were deemed export sales and subject to the 0% VAT rate. The reduction in income is the injury and damage to petitioner which is well within the meaning of the provision herein cited."

Prescinding from the above ruling, petitioner's sales of gold to the Central Bank are zero-rated and VAT Ruling No. 008-92 and RMO 22-92 cannot apply retroactively.

The obvious question follows: how much is petitioner entitled to a refund/tax credit?

According to the witness, Miss Nancie Rivera, out of the P14,725,981.77 input tax payments (per VAT returns) for the period February 1989 to July 1991, only P12,507,393.80 was duly supported by documents.

It is worthy to note that the VAT returns involving the quarters February to April 1989, and May to July 1989 were filed on May 8, 1989, and August 21, 1989, respectively, and the Petition for Review involving the same quarters was filed on November 20, 1991. With respect to the quarter November 1989 to January 1990, the corresponding VAT return was filed on February 19, 1990 and the Petition for Review relating thereto was filed on February 20, 1992.

Section 230 of the Tax Code provides, to wit:

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"SEC. 230. *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 eroneously 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; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

<u>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</u> 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." (Underscoring supplied.).

In relation thereto, Sections 106(b) and 110 state that:

"SEC. 106. *Refunds or tax credits of input tax.* - xxx

(b) *Zero rated or effectively zero-rated sales.* Any person, except those covered by paragraph (a) above, whose sales are zero-rated or effectively zero-rated may, <u>within two years after the close of the quarter when such sales were made</u>, 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." (Underscoring Ours.).

"SEC. 110. *Return and payment of value-added tax.* (a) *In general* - Every person liable to pay the value-added tax imposed under this title shall file a quarterly return of the amount of his gross sales or receipt within twenty (20) days following the close of each taxable quarter prescribed for each taxpayer: xxx"

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This Court in the case of **Atlas Consolidated Mining and Development Corporation versus Commissioner of Internal Revenue**, CTA Case No. 5296, promulgated a resolution, dated July 20, 1998, which ruled:

> "Anent the first issue, this Court, after a careful study of the arguments adduced by petitioner, reconsiders the decision with regard to the issue of prescription and consequently agrees with the interpretation of petitioner that the two-year period should be counted from the date of filing of the corresponding VAT quarterly return which is within twenty (20) days after the close of each taxable quarter. This will harmonize Section 106 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the cases of Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Appeals, GR No. 83736, dated January 15, 1992; and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957, that the two (2) year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore, to conclude that the two year period should not immediately be counted from the close of the quarter but from the date of filing of the VAT return."

Resultantly, it is crystal clear that the claims pertaining to the abovementioned three quarters have already prescribed.

WHEREFORE, in view of all the foregoing, petitioner's claims for refund/tax credits are hereby granted as follows:

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QUARTER COVERED	PROPERLY SUPPORTED INPUT TAX CLAIM	LESS OUTPUT TAX CHARGED DURING THE QUARTER	REFUNDABLE INPUT TAX
Aug. 1989 to Oct. 1989	P 915,383.38	P 41,488.00	P 873,895.38
Feb. 1990 to April 1990	1,114,042.61	42,739.00	1,071,303.61
May 1990 to July 1990	1,416,509.27	49,861.00	1,366,648.27
Aug. 1990 to Oct. 1990	2,470,059.92	56,114.00	2,413,945.92
Nov. 1990 to Jan. 1991	1,149,846.97	23,328.00	1,126,518.97
Feb. 1991 to April 1991	2,042,735.47	43,451.00	1,999,284.47
May 1991 to July 1991	2,025,354.53	49,247.00	1,976,107.03
T o t a l	P11,133,932.15	P306,228.00	P10,827,703.65

ACCORDINGLY, respondent Commissioner of Internal Revenue is hereby ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner in the total amount of P10,827,703.65 representing excess input taxes paid for the period August 1989 to July 1991.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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CERTIFICATION

I hereby certify that this 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

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