REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SEMIRARA MINING CORPORATION, Petitioner,	C.T.A. CASE NO. 7867
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 04 2011; 10:46am

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DECISION

FABON-VICTORINO, J.:

STATEMENT OF THE CASE

In this Petition for Review filed on February 04, 2009, petitioner Semirara Mining Corporation (SMC) seeks a refund or issuance of a Tax Credit Certificate (TCC) for the amount of P15,292,054.93, allegedly representing the final withholding value-added tax (VAT) on its sales of coal for the month of January 2007, which the National Power Corporation (NPC) erroneously withheld and remitted to the Bureau of Internal Revenue (BIR) on February 9, 2007.

Petitioner SMC is a duly organized and existing domestic corporation with principal office at 2nd Floor, DMCI Plaza Building, 2281 Don Chino Roces Avenue, Makati City.[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) with the authority to determine and approve application for refund or issuance of TCC, with office address at the 5th Floor, BIR Building, Agham Road, Diliman, Quezon City.[2]

Petitioner states that it is engaged in the exploration, mining, extraction and sale of ship coal, coke and other coal products and by-products and acquisition, ownership and exercise of the rights and privileges under the coal operating contract/s, executed by virtue of Presidential Decree (PD) No. 972, otherwise known as the "Coal Development Act of 1976". It is registered with the BIR as a Non-VAT enterprise with Taxpayer Identification No. (TIN) 000-190-324-000.[3] Presently, it operates a coal mine in Semirara, Caluya, Antique and sells its coal production to the National Power

[1] Paragraph 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 262.
[2] Paragraph 3, JSFI, Docket, *Ibid.*
[3] Exhibit B.

Corporation (NPC), a government-owned and controlled corporation in accordance with the duly executed Coal Supply Agreement between NPC and SCC[4].

On July 11, 1977[5] petitioner's predecessors-in-interest[6] entered into a Coal Operating Contract (COC)[7] with the Philippine Government, through the Energy Development Board (EDB) of then Ministry of Energy[8] pursuant to PD No. 972. Subsequently, the COC and all the rights, privileges and obligations appurtenant thereto were transferred to Semirara Coal Corporation (SCC) - now the petitioner - by virtue of a Deed of Assignment dated April 7, 1980. The COC has a life of until 2027.[9]

The COC implements the declared state policy stated in PD No. 972 to accelerate the exploration, development, exploitation, production and utilization of the country's coal resources. In line with this policy, Section 16 of PD No. 972 provides for various incentives to COC operators, including tax exemptions as follows:

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[4] Paragraph 6, Statement of Facts and the Case, Petition, Docket, *Ibid.*
[5] Paragraph 2, Stipulation of Facts, JSFI, Docket, p. 262.
[6] The predecessors-in-interest of petitioner were Vulcan Industrial and Mineral Exploration Corporation (VIMEC) and Sulu Sea Oil Development Corporation (SSODC).
[7] Exhibit "C-1".
[8] Paragraph 5, Statement of Facts and the Case, Petition for Review (Petition), Docket, p. 3.
[9] Exhs. D and S; TSN, J. Tabor, July 9, 2009, pp. 11-13.

> "Section 16. Incentives to Operators. *The provisions 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 required for the coal operations subject to the following conditions..." (Emphasis supplied)

The foregoing provision was in turn incorporated in the terms and conditions of the COC, to wit:

> "Section V. Rights and Obligations of the Parties
>
> ...
>
> 5.2. The OPERATOR shall have the following rights:
>
> a) *Exemption from all taxes (national and local) except income tax*[10]..." (Emphasis Supplied)

Petitioner further claims that Section 109 of Republic Act No. 8424 or the National Internal Revenue Code of 1997 (NIRC of 1997),[11] also exempted petitioner from VAT on its sale or importation of coal, thus:

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[10] Paragraph 7, Statement of Facts and the Case, Petition, Docket, pp. 3-4.
[11] An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes.

> "Section 109. Exempt Transactions.- The following shall be exempt from value added tax:
>
> ...
>
> (e) *Sale or importation of coal,* natural gas, in whatever form or state, and petroleum products (except lubrication oil, processed gas, grease, wax, and petroleum) subject to excise tax under Title VI..." (Emphasis supplied)

However, when the NIRC of 1997 was amended and R.A. 9337 became effective in November 2005, respondent began to withhold final withholding VAT of five percent (5%) on coal billings of petitioner claiming that coal sales by petitioner were no longer exempt from VAT[12] pursuant to Section 114 (C) of the law, which reads as follows:

> "(C) Withholding of Value-added Tax. - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof:
>
> ...
>
> The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made[13]".

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[12] Exhibit "E".
[13] Paragraph 9, Statement of Facts and the Case, Petition, Docket, p. 5.

In view thereof, petitioner requested for a BIR pronouncement that its sale of coal to NPC was still exempt from VAT, notwithstanding the effectivity of the amendatory law.

On March 7, 2007, respondent issued BIR Ruling No. 0006-2007[14], sustaining petitioner's position in this wise:

> "...[S]ince the tax exemption on the sale of coal products is premised on PD 972 which is a special law, and which Section 109(k) of the Tax Code, as amended so specifically provides to be the basis of the VAT exemption, the same shall apply to coal produced by SMC pursuant to the COC.
>
> In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, *SMC's sales of coal produced by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109 (k) of the Tax Code, as amended by R.A. 9337, in relation to PD 972, as amended*[15]..." (Emphasis supplied)

Immediately petitioner furnished the NPC with a copy of the BIR Ruling and demanded that the latter immediately cease from deducting and withholding the final VAT from its payment to petitioner's sales of coal. NPC however continued to withhold the

[14] Exhibit "F".
[15] Paragraph 10, Statement of Facts and the Case, Petition, Docket, p. 6.

final VAT for the month of January 2007[16] and remitted the same to the BIR on February 9, 2007, as indicated in the following documents: (a) Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600) filed by NPC with the BIR on February 9, 2007[17]; (b) Revenue Official Receipt No. 03016046[18] (BIR Form No. 2524; (c) Certificates of Final Tax Withheld at Source (BIR Form No. 2306) issued by BPC to petitioner[19]; and (d) NPC's Certification dated December 10, 2007[20], certifying the amount of final VAT withheld by NPC for petitioner's January 2007 coal sales[21].

On May 21, 2007, petitioner filed with Revenue District Office No. 121 (RDO 121), Large Taxpayers' Division of the BIR an application (BIR Form No. 1914) for issuance of TCC together with all the supporting documents, in the amount of P15,292,054.93, representing the final withholding VAT on coal billings of petitioner for the month of January 2007.[22] To date, the said application remains unresolved by respondent, resulting in the filing of the instant petition.

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[16] Paragraph 11, Statement of Facts and the Case, Petition, Docket, *Ibid.*
[17] Exhibit "G".
[18] Exhibit "G-2".
[19] Exhibits "H" to "H-69".
[20] Exhibit "I".
[21] Paragraph 12, Statement of Facts and the Case, Petition, Docket, p. 6.
[22] Paragraph 4, JSFI, Docket, p. 263.

In the Answer filed on March 12, 2009, respondent moves to dismiss the instant petition for lack of cause of action. Respondent posits, among others, that the claim for tax refund is still subject of administrative investigation and/or examination by respondent. Moreover, petitioner is yet to prove that both the administrative and judicial claims for refund were seasonably filed in accordance with Section 112 (A) and (C) and 229 of the Tax Code, as amended. Full compliance with the requisites of the law for entitlement must also be established. The presumption that the collection and payment of taxes were in accordance with law, rules and regulations must as well be overturned. Further, petitioner's exemption from VAT under R.A. 8424 has been deleted in Republic Act No. 9337 or the New Expanded Value-Added Tax[23]. Such only means that petitioner's sale or importation of coal and natural gas, in whatever form and state shall now be subject to VAT.

Assuming that petitioner is exempt from VAT, it is still liable under Section 109(z) of the old VAT Law having issued a VAT invoice or receipt rendering it liable for VAT without the benefit of input tax credit. More importantly, the present action has already prescribed. Under Section 112 of the NIRC of 1997, respondent had 120 days, within which to act on petitioner's claim filed on May 21,

[23] Section 109 paragraph (e) of the Tax Code, as amended.

2007 or until September 24, 2007. Thereafter, it had 30 days to file its judicial claim. However, the instant petition was filed only on February 2, 2009, or almost two years from the time the administrative claim was lodged in violation of Section 112 of the Tax Code of 1997. Besides, claims for refund are strictly construed against the claimant for it is deemed an exemption from taxation and liberally in favor of the taxing authority[24]. Anent, petitioner's claim that its tax exemption is under the mantle of constitutional protection against non-impairment of contract, respondent posits that tax exemptions granted under a legislative franchise are subject to amendment, alteration, repeal by Congress when the common good requires[25].

On March 24, 2009, the parties filed their respective Pre-Trial Briefs[26] and their Joint Stipulation of Facts and Issues on April 13, 2009, which the Court approved on April 15, 2009[27].

Trial ensued during which the parties presented their respective pieces of evidence - documentary and testimonial.

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[24] Commissioner of Internal Revenue vs, Manila Mining Corp., 468 SCRA 571.
[25] Manila Electric Co. vs. Province of Laguna and Benito R. Balazo, G.R. No. 131359, May 5, 2009.
[26] Petitioner's Pre-Trial Brief, Docket, pp. 246-254; Respondent's Pre-Trial Brief, Docket, pp. 255-259.
[27] Docket, pp. 266.

On January 29, 2010, the petition was deemed submitted for decision after respondent filed a Memorandum on January 4, 2010 and petitioner, on January 18, 2010.

THE ISSUES

In their Joint Stipulation of Facts and Issues, the parties submitted the following for the resolution of the Court:

> "1. Whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P15,292,054.93, representing the final withholding VAT withheld by NPC on its payments for the month of January 2007 for petitioner's sales of coal to NPC, and remitted by NPC to the BIR on February 9, 2007.
>
> 2. Whether or not petitioner's claim for tax credit certificate of the final withholding VAT withheld by NPC on its payments for the month of January 2007 is duly substantiated by documentary evidence.
>
> 3. Whether or not Presidential decree No. 972 (1976) otherwise known as the "Coal Development Act of 1976," was repealed by Republic Act No. 9337 (2005).
>
> 4. Whether or not petitioner has exhausted all administrative remedies before filing this Petition."

w/

THE RULING OF THE COURT

Petitioner is entitled to the refund prayed for as its sales or importations of coal, natural gas in whatever form or state are exempt from VAT

PD No. 972 declares the Government's policy to accelerate the exploration, development, exploitation, production and utilization of the country's coal resources. Precisely the Philippine Government and petitioner's predecessor's-in-interest, namely, Vulcan Industrial and Mineral Exploration Corporation (VIMEC) and Sulu Sea Oil Development Corporation (SSODC) and Energy Development Board of then Ministry of Energy, executed the COC to breathe life into this policy. To promote the project and encourage operators as well as investors, the law itself provided incentives such as tax exemptions expressly granted unto them by virtue of Section 16(a) thereof, which reads as follows:

> **"Presidential Decree No. 972**
> **Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal**
>
> **SEC. 16.** *Incentives to Operators.* The provisions 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 to spare parts and materials required for the coal operations subject to the following conditions... (Emphasis supplied)"

This tax-exemption was expressly incorporated in Section 5.2 of the COC as follows:

> "Section V. Rights and Obligations of the Parties
>
> ......
>
> 5.2. The OPERATOR shall have the following rights:
>
> (a) *Exemption from all taxes (national and local) except income tax...*" (emphasis supplied)

From the foregoing provisions, petitioner as a coal mine operator, is entitled to claim the incentive of exemption from all taxes, both national and local, other than income tax. It may be noted that under Section 21 of the NIRC of 1997, VAT is among the enumerated taxes, fees and charges deemed to be national taxes from which petitioner may claim exemption from paying. For ready reference, the provision is as follows:

> "Sec. 21. Sources of Revenue. - The following taxes, fees and charges are deemed to be national internal revenue taxes:
>
> (a) Income tax;
> (b) Estate and donor's tax;
> (c) *Value-added tax*;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue."

Thus, except for income tax, petitioner may claim exemption from paying VAT on its transactions under the COC.

Moreover, in one of its earlier rulings, specifically in VAT Ruling No. 557-88, the BIR clarified that petitioner is indeed exempt from VAT pursuant to Section 16 of PD No. 972, which exemption has been incorporated in its COC. The BIR stated:

> "...[P]ursuant to Section 16 of Presidential Decree No. 972, coal operators are exempt from the following:
>
> 1. All taxes except income tax.
> 2. Payment of tariff duties and compensating tax on the importation of machinery and equipment operations under some conditions.
>
> xxx xxx xxx
>
> In view of this, small scale contractors and coal operators are exempt from VAT under Sec. 103 (u) of the Tax Code as amended by Executive Order No. 273 *provided, that* **the exemption from all taxes except income tax is incorporated into the service and operating contracts granted by the government of**

> **the Philippines pursuant to PD 972**[28]". (Emphasis supplied)

Anent respondent's contention that the grant of exemption upon petitioner under R.A. 8424 has been removed when R.A. 9337 took effect in November 2005, suffice it to say that change of heart on the part of the BIR does not appear. In fact, about two years from the effectivity of R.A. 9337, the BIR in its Ruling No. 006-2007[29] maintained its previous stand that petitioner is exempt from VAT on its coal sales under the COC. The BIR relevantly states:

> "...[S]ince the tax exemption on the sale of coal products is premised on PD 972 which is a special law, and which Section 109(k) of the Tax Code, as amended so specifically provide to be the basis of the VAT exemption, the same shall apply to coal produced by SMC pursuant to the COC...
>
> In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, SMC's sales of coal produces by virtue of COC with EDB remain exempt from VAT pursuant to Section 109(k) of the Tax Code, as amended by R.A. No. 9337, in relation to PD 972, as amended..."

As regards the alleged repeal of the provisions pertinent to this case, which according to respondent effectively removed

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[28] VAT Ruling No. 557-88 dated Dec. 3, 1988 addressed to Mr. W.R. dela Paz, Executive Director, Office of Energy Affairs.
[29] Exhibit "F"

petitioner's exemption from VAT, the repealing clause of RA 9337, Section 24 pertinently states:

> "Sec. 24. Repealing Clause. – The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
>
> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated [power by generation companies; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly."

Indeed, there is no indication that RA 9337 repealed PD No. 972 or any section or paragraph thereof, whether express or implied. It has been ruled that a special law such as PD No. 972 cannot be repealed, amended or altered by a subsequent general law by mere implication.[30] If the intent to repeal is not clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act.[31] The legislature is presumed to know the existing laws; if it intended a repeal of the earlier law, it

[30] Manzano vs. Valera, G.R. No. 122068, July 08, 1998.
[31] Social Justice Society vs. Atienza, Jr., G.R. No. 156052, February 13, 2008.

should have so expressed that intention in the subsequent statute. Thus, a statute will not be deemed to have been impliedly repealed by another enacted subsequent thereto unless there is a showing that a plain, unavoidable and irreconcilable repugnancy exists between the two.[32] Absent an express repeal, as in this case, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws.[33] An express repeal, is one wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed. Absent this specific requirement, an express repeal may not be presumed.[34]

There being no plain and irreconcilable repugnancy between the relevant provisions of the pertinent laws and considering that the repealing clause of R.A. No. 9337, specifically Section 24 thereof did not expressly include P.D. 972 in its enumeration of repealed laws or provisions, it is plain that the latter has not been repealed by R.A. No. 9337 and petitioner may still invoke in its favor VAT exemption under the COC.

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[32] Freedom from Debt Coalition vs. Energy Regulatory Commission, G.R. No. 161113, June 15, 2004
[33] People v. Benipayo. G.R. No. 154473, April 24, 2009; Photokina Marketing v. Benipayo, G.R. No. 155573.
[34] Penera v. COMELEC, G.R. No. 181613, September 11, 2009.

Section 109 (k) of RA 9337 provides as well that transactions which are exempt under special laws are also exempt from VAT, thus:

> "Sec. 109. *Exempt Transactions.* - (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (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. (Emphasis supplied)

Significantly, in *Semirara Mining Corporation vs. Commissioner of Internal Revenue,*[35] the foregoing issues had been laid to rest by this Court, in this fashion:

> "The inherent power of the state to impose taxes includes the power to grant tax exemptions. Tax exemptions may be granted either by the Constitution or by an act of legislature, subject to limitations as the Constitution may provide.
>
> The tax exemption being availed of by the petitioner is a tax exemption granted by an act of legislature, which is, P.D. No. 972. Under Section 16 of the said law, operators of coal operating contracts are given various incentives, which include exemption from all taxes except income tax. Furthermore, the said incentive or tax exemption provided for by P.D. 972 was embodied and incorporated in Section 5.2 of the Coal Operating Contract between petitioner and the Philippine Government. In the present case, the petitioner is seeking exemption from VAT. As provided under Section 21 of the 1997 Tax Code, VAT is one of the national

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[35] CTA Case No. 7717, October 13, 2009

internal revenue taxes, hence, exemption from VAT falls within the exemptions provided by P.D. 972 and its Coal Operating Contract. Furthermore, petitioner's claim for exemption from payment of the VAT is also covered by the 1997 Tax Code notwithstanding its amendment by R.A. 9337, as provided by Section 109 (K), which reads as follows

"REPUBLIC ACT NO. 9337
AN ACT AMENDING SECTIONS 27, 28, 34, 106,
107, 108, 109, 110, 111, 112, 113, 114, 116,
117,
119, 121, 148, 151, 236, 237 AND 288 OF THE
NATIONAL INTERNAL REVENUE CODE OF 1997, AS
AMENDED, AND FOR OTHER PURPOSES

Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

SEC. 109. **Exempt Transactions**. — (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

xxx xxx xxx

(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;

xxx xxx xxx"

Based on the aforequoted provision of Section 109, petitioner is entitled to exemption from VAT since its sale of coal is exempted from VAT as provided under a special law, which is PD 972.

In its last effort to prove that petitioner is not entitled to a tax refund or to be issued a tax credit certificate, respondent avers that the tax exemption under P.D. 972 has been effectively repealed by R.A. 9337, specifically by Section 24, which provides:

xxx xxx xxx

In the case at bar, there is no express repeal since as stated by the petitioner, there is no express mention of P.D. 972 in the Repealing clause of R.A. 9337. As ruled by the Supreme Court in the case of Mecano vs.

> Commission on Audit, it is settled that an express repeal is a declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number and title is repealed; all other repeals are implied repeals. Likewise, there cannot be an implied repeal since repeal of laws should be made clear and expressed. Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject; Furthermore, a law cannot be deemed repealed unless it is clearly manifest that the legislature so intended it. **Considering that the exemption of the petitioner from all taxes except income tax, as provided by P.D. 972, is not enumerated in Section 24 of R.A. 9337, the tax exemption of petitioner still subsists.**" (Emphasis supplied)

Contrary to respondent's contention, petitioner submitted various documents to substantiate its claim that NPC erroneously withheld and remitted to the BIR the amount of P15,292,054.93, allegedly representing 5% final withholding VAT on NPC's gross payments for coal purchases from petitioner for the month of January 2007.

The following documents were presented during the trial, to wit:

(a) "Monthly Remittance Return of Value-Added Tax and other Percentage Taxes Withheld" (BIR Form No. 1600) filed by NPC with the BIR on February 9, 2007;[36]

(b) "Alphabetical List of Payees from Whom Taxes Were Withheld for the Month of January 2007" (BIR Form No.

[36] Exhibit "G"

1600- Schedule II) filed by NPC with the BIR on February 9, 2007;[37]

(c) Revenue Official Receipt No. 03016046 (BIR Form No. 2524);[38]

(d) "Certificate of Final Tax Withheld at Source" (BIR Form No. 2306) issued by NPC to petitioner;[39]

(e) NPC's "Certification" dated December 10,2007, certifying the amount of final VAT withheld by NPC from its gross payments made in January 2007;[40]

(f) Various sales invoices and debit memoranda issued by the petitioner to NPC reflecting its gross billings to NPC for January 2007;[41]

In fine, petitioner's claimed 5% final withholding VAT in the amount of P15,292,054.91 has been substantiated, broken down as follows:

Exhibit	Gross Income Payment	Rate	Final VAT Withheld
H	P 2,146,639.82	5%	P 107,331.99
H-1	1,881,317.15	5%	94,065.86
H-2	1,980,479.12	5%	99,023.96
H-3	1,509,614.85	5%	75,480.74
H-4	2,204,602.54	5%	110,230.13
H-5	587,656.46	5%	29,382.82
H-6	2,311,749.41	5%	115,587.47
H-7	2,089,088.91	5%	104,454.44[42]
H-8	2,820,818.27	5%	141,040.91
H-9	2,673,574.51	5%	133,678.72[43]
H-10	1,928,710.37	5%	96,435.52
H-11	2,438,055.59	5%	121,902.78
H-12	2,160,518.42	5%	108,025.92
H-13	2,220,558.43	5%	111,027.92

[37] Exhibit "G-1".
[38] Exhibit "G-2".
[39] Exhibits "H" to "H-69".
[40] Exhibit "I".
[41] Exhibits "J" to "J-2".
[42] Amount per certificate is P104,454.45 but amount per remittance return is P104,454.44.
[43] Amount per certificate is P133,678.73 but amount per remittance return is P133,678.72.

H-14	1,919,427.75	5%	95,971.39
H-15	2,891,831.97	5%	144,591.60
H-16	2,856,748.61	5%	142,837.43
H-17	3,235,934.97	5%	161,796.75
H-18	2,836,618.40	5%	141,830.92
H-19	2,669,261.10	5%	133,463.06
H-20	2,079,958.49	5%	103,997.92
H-21	2,851,977.99	5%	142,598.90
H-22	2,693,078.35	5%	134,653.92
H-23	2,706,001.07	5%	135,300.05
H-24	2,809,695.74	5%	140,484.79
H-25	2,884,548.80	5%	144,227.44
H-26	2,000,739.90	5%	100,037.00
H-27	2,528,191.44	5%	126,409.57
H-28	2,879,077.48	5%	143,953.87
H-29	2,866,353.18	5%	143,317.66
H-30	2,166,633.76	5%	108,331.69
H-31	2,507,503.96	5%	125,375.20
H-32	2,875,259.36	5%	143,762.97
H-33	2,811,001.85	5%	140,550.09
H-34	2,505,792.98	5%	125,289.65
H-35	6,641,053.80	5%	332,052.69
H-36	2,538,005.82	5%	126,900.29
H-37	6,054,345.46	5%	302,717.27
H-38	1,961,754.67	5%	98,087.73
H-39	8,642,088.06	5%	432,104.40
H-40	2,779,100.92	5%	138,955.05
H-41	8,643,028.87	5%	432,151.44
H-42	3,134,544.55	5%	156,727.23
H-43	8,831,286.79	5%	441,564.34
H-44	3,178,699.21	5%	158,934.96
H-45	8,715,291.15	5%	435,764.56
H-46	2,066,019.54	5%	103,300.98
H-47	8,601,780.87	5%	430,089.04
H-48	2,512,331.41	5%	125,616.57
H-49	8,872,398.92	5%	443,619.95
H-50	3,062,392.29	5%	153,119.61
H-51	691,823.67	5%	34,591.18
H-52	8,800,183.08	5%	440,009.15
H-53	2,520,167.04	5%	126,008.35
H-54	8,827,356.68	5%	441,367.83
H-55	3,354,120.22	5%	167,706.01
H-56	8,702,126.60	5%	435,106.33
H-57	2,630,715.99	5%	131,535.80
H-58	6,000,314.71	5%	300,015.74
H-59	8,747,358.04	5%	437,367.90

H-60	8,720,827.70	5%	436,041.39
H-61	8,777,113.29	5%	438,855.66
H-62	6,123,869.57	5%	306,193.48
H-63	8,655,180.37	5%	432,759.02
H-64	8,898,182.79	5%	444,909.14
H-65	8,689,852.99	5%	434,492.65
H-66	8,880,314.15	5%	444,015.71
H-67	8,600,129.71	5%	430,006.49
H-68	8,810,134.75	5%	440,506.74
H-69	8,648,183.59	5%	432,409.18
		Total:	**P 15,292,054.91**

In the same vein, there is no merit to respondent's protestation that petitioner failed to submit all relevant documents in the administrative level rendering recourse to the Court premature on account of failure to exhaust administrative remedies.

In *Commissioner of Internal Revenue vs. Manila Mining Corporation*,[44] it was ruled that documentary evidence presented before respondent in the administrative proceeding have no evidentiary value unless offered before this Court where the cases are litigated *de novo*, thus:

> Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.

[44] G.R. No. 153204, August 31, 2005.

Under the cited jurisprudence, petitioner must substantiate its claim for refund, regardless of the outcome of the proceeding before the administrative body, as it did before this Court.

As to respondent's contention that the Petition for Review was not seasonably filed on February 04, 2009 or two (2) years from remittance of the subject amount to the BIR on February 09, 2007, in violation of Section 112 of the NIRC, let it be stressed that the amount involved pertains to final withholding VAT on petitioner's exempt sale of coal to NPC for the month of January 2007 erroneously withheld by NPC, not to zero rated or effectively zero rated sale as contemplated under Section 112 of the Tax Code. Therefore, the applicable provisions are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide 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 stamped 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..."

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 therefore, 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."

Admittedly, the subject claim pertains to final withholding VAT which must be remitted within ten (10) days following the end of the month when the withholding was made pursuant to Section 114(C) of the NIRC of 1997, as amended, which reads as follows:

"SEC. 114. *Return and Payment of Value-Added Tax.*_

xxx xxx xxx

(C) *Withholding of Value-Added Tax.* - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final

> value added tax at the rate of five percent (5%) of the gross payment thereof: *Provided,* that the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.
>
> The value-added tax withheld under this section shall be remitted within ten (10) days following the end of the month the withholding was made."

Reckoned from February 9, 2007[45], or the date the NPC remitted the final withholding VAT on its January 2007 payments to petitioner, the administrative claim filed on May 21,2007[46] and the Petition for Review filed on February 4, 2009 were clearly within the two year prescriptive period provided for by law.

All told, the instant petition is meritorious. Petitioner is exempt from VAT pursuant to Section 109(K) of the NIRC of 1997, as amended, in relation to Section 16 of P.D. No. 972. *A fortiori*, respondent is under obligation to refund or issue a TCC in favor of petitioner in the amount of P15,292,054.91, in accordance with Sections 204 and 229 of the NIRC of 1997, as amended.

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND OR**

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[45] Exhibit "G"
[46] Exhibits "J" to "J-2" and "K"

ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the amount of P15,292,054.91, representing the final withholding value-added tax (VAT) on its sales of coal for the month of January 2007, which the National Power Corporation (NPC) erroneously withheld and remitted to the Bureau of Internal Revenue (BIR) on February 9, 2007.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice