REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SEMIRARA MINING CORPORATION,
Respondent.

C.T.A. EB NO. 752
(C.T.A. CASE NO. 7867)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
MAR 2 2 2012 cwApolinario 2:08 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner CIR") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, *as amended*, in relation to *Rule 43* of the *1997 Revised Rules of Civil Procedure, as*

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amended, which seeks to set aside the Decision dated January 4, 2011 and Resolution dated March 18, 2011, rendered by the First Division of this Court in C.T.A. Case No. 7867, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND OR 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.
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> **SO ORDERED**."
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> "WHEREFORE, premises considered, the Motion for Reconsideration dated January 21, 2011, filed by respondent is hereby DENIED for insufficiency of evidence.
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> SO ORDERED."

THE FACTS

The antecedent facts, as culled from the records, are as follows:

Petitioner CIR is the duly appointed Commissioner of Internal Revenue, with office address at the BIR Building, Diliman, Quezon City.

On the other hand, respondent Semirara Mining Corporation (hereafter "respondent Semirara") is a domestic corporation duly

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organized and existing under the laws of the Republic of the Philippines with principal office at 2nd Floor DMCI Plaza, 2281 Chino Roces Avenue, Makati City, Metro Manila.

Respondent Semirara is engaged, among others, in the exploration, mining, extraction, and sale of ship coal, coke and other coal products and by-products, and the acquisition, ownership, and exercise of the rights and privileges under the coal operating contracts, as stated in its Amended Articles of Incorporation dated July 20, 2005.

On February 9, 2007, NPC remitted to the BIR the withheld final withholding VAT from respondent Semirara's sales of coal in the total amount of P15,292,054.93.

On March 7, 2007, petitioner CIR issued BIR Ruling No. 0006-2007 in favor of respondent Semirara.

On May 21, 2007, respondent Semirara filed with the Revenue District Office No. 121 (RDO 121), Large Taxpayer's Division of the BIR, an Application for Tax Credits/Refunds (BIR Form No. 1914), together with all the supporting documents, in the amount of P15,292,054.93, representing the final withholding VAT on coal billings of respondent Semirara for the month of January 2007.

On February 4, 2009, alleging inaction, respondent Semirara filed a Petition for Review with the First Division of this Court, docketed as C.T.A. Case No. 7867.

In her Answer, by way of special and affirmative defenses, petitioner alleged that respondent Semirara's claim for refund is subject to administrative investigation and/or examination by petitioner CIR; it is imperative for respondent Semirara to prove compliance with: a) registration requirements of a value added taxpayer in compliance with Section 9.236-1(a) or RR No. 16-2005 and Section 236 of the Tax Code; b) invoicing and accounting requirements, pursuant to Sections 113 and 114 of the Tax Code; c) prescribed checklist of requirements pursuant to Section 9.236-1(a) of RR No. 16-2005 and RMO No. 53-98; and d) Section 112 (A) and (D) and Section 229 of the Tax Code; that taxes paid and collected are presumed to have been made in accordance with law, rules and regulations; that the amendments to RA 9337 which provides the exempt transactions from VAT deleted among others the "sale or importation of coal and natural gas, in whatever form or state"; that assuming respondent Semirara is exempt from VAT, it is still liable under Section 109 (z) of the old VAT law; and respondent Semirara's action for refund had already prescribed.

On January 4, 2011, after trial on the merits, the First Division rendered a Decision granting respondent Semirara's claim for refund.

On January 24, 2011, petitioner CIR filed a "Motion for Reconsideration", to which respondent Semirara filed an "Opposition (To Respondent's Motion for Reconsideration)" on February 16, 2011.

On March 18, 2011, the First Division denied petitioner CIR's "Motion for Reconsideration" for lack of merit.

Not satisfied, on April 11, 2011, petitioner CIR filed the instant Petition for Review raising the following:

ISSUES

I

WHETHER OR NOT RESPONDENT IS ENTITLED TO REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P15,292,054.93 REPRESENTING FINAL WITHHOLDING VAT ALLEGED TO HAVE BEEN ERRONEOUSLY WITHHELD BY NPC ON ITS PAYMENTS FOR THE MONTH OF JANUARY 2007 FOR SALES OF COAL TO NPC AND REMITTED BY NPC TO THE BIR ON FEBRUARY 9,2007.

II

WHETHER OR NOT RESPONDENT HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES BEFORE IT ELEVATED THE MATTER TO THE CTA.

III

WHETHER OR NOT THE SALE OR IMPORTATION OF COAL IS STILL EXEMPT FROM VAT.

IV

WHETHER OR NOT BIR RULING NO. 0006-2007 IS ERRONEOUS AND IF SO, WHETHER OR NOT THE GOVERNMENT IS ESTOPPED BY SUCH ERROR.

On May 12, 2011, without necessarily giving due course to the petition, respondent was ordered to file its comment, within ten (10) days from notice, to which respondent Semirara complied on May 30, 2011.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Both parties having complied thereto, this case was deemed submitted for decision on September 14, 2011.

Hence, this decision.

THE COURT EN BANC'S RULING

The petition has no merit.

After a careful examination of the arguments raised in the instant petition, the Court *En Banc* finds that the issues raised by petitioner CIR are a mere rehash of her Motion for Reconsideration filed in C.T.A. Case No. 7867 and present no new arguments nor new matters which have not been considered and passed upon by the First Division in the assailed Decision dated January 4, 2011 and Resolution dated March 28, 2011. Nevertheless, the Court *En Banc* will discuss them in *seriatim*.

Petitioner CIR contends that respondent Semirara failed to submit all necessary and relevant documents in its administrative claim for refund of credit of final withholding VAT input tax attributable to sales to NPC; respondent Semirara failed to prove compliance with the prescribed checklist of requirements, pursuant to RMO No. 53-98, hence, its administrative claim is merely pro forma; the sale or importation of coal and natural gas, in whatever form or state, is no longer exempt from VAT in view of the provisions of RA 9337, amending certain provisions of RA 8424; and BIR Ruling No. 0006-2007 is an erroneous application and interpretation of the law, as it grants exemption when it has already been removed by RA 9337.

Respondent Semirara, on the other hand, claims that the procedural argument that it failed to exhaust administrative remedies was properly disregarded by the First Division for being irrelevant; PD 972 was not impliedly repealed by RA 9337, pursuant to the principle of expressio unius est exclucio alterius; and CIR's claim that BIR Ruling No. 0006-2007 is erroneous does not deserve scant consideration.

We rule for respondent Semirara.

At the outset, we find that the issue in this case is not novel. This Court has consistently ruled that pursuant to *Section 109 (k) of RA 9337*, respondent Semirara is exempt from VAT under PD 972 (*Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal)*.

Section 109 (k) of RA 9337 provides, 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

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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:

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(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;

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PD 972 is a special law which aims to provide incentives not only to coal users, but more importantly, to operators of coal operating contracts. In order to encourage and promote said policy, *Section 16 of PD 972* expressly grants tax incentive to operators of a contract under the said Decree which exempts them from all taxes except income tax.

Indubitably, respondent Semirara is an operator under a Coal Operating Contract ("COC"), where the Philippine government is a signatory. Thus, the provision of *Section 16 of PD 972* was embodied in their agreement under Section 5.2 which expressly provides that respondent Semirara, as an operator, is exempt from all taxes, national and local, except income tax.

In this case, it is clear that respondent Semirara is exempt from VAT under *PD* 972 and the Coal Operating Contract.

As regards petitioner CIR's contention that *RA 9337* amended certain provisions of *RA 8424,* particularly on VAT, and effectively deleted the provision which grants tax exemption to respondent Semirara regarding the sale or importation of coal and natural gas, We rule that the repeal of a special law (PD 972) by a general law cannot be merely implied. As aptly ruled by the First Division:

> "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. 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. The legislature is presumed to know the existing laws; if it intended a repeal of the earlier law, it 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. 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. 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.
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> 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."

Records show that petitioner CIR already admitted respondent Semirara's exemption from VAT, pursuant to *Section 16 of PD 972,* even after the effectivity of *RA 9337,* through BIR Ruling No. 0006-07,which provides:

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> "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 (petitioner'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 RA 9337, in relation to PD 972, as amended."

However, we reiterate that even without the said BIR Ruling, respondent Semirara's claim is grounded upon a valid and existing law. Otherwise said, the grant of respondent Semirara's claim is not founded on mere estoppel on the part of the government, but rather on an express grant of exemption.

As to petitioner CIR's contention that respondent Semirara failed to exhaust administrative remedies, this Court has consistently ruled that although the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, the non-submission of the same with petitioner CIR does not make the administrative claim for refund or tax credit certificate invalid or pro forma, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. It must be emphasized that cases filed with the CTA in Division are litigated de novo, thus, documentary evidence presented before petitioner CIR in the administrative proceeding has no evidentiary

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value unless formally offered before the Court. Thus, in the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation, 468 SCRA 588-589*, the Supreme Court ruled:

> "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."

Moreover, we note that respondent Semirara's judicial claim emanated from petitioner CIR's inaction on Semirara's administrative claim for almost two years. It is, therefore, erroneous for petitioner CIR to argue that respondent Semirara failed to exhaust all available remedies prior to elevating its refund claim before this Court only after the assailed Decision dated January 4, 2011 was rendered by the First Division.

All told, in cases of judicial appeal to the Court in Division, where cases are litigated de novo, it is imperative for the taxpayer to meet the burden of proof required in order to establish the factual basis of its claim for tax refund by presenting all relevant documents for the proper determination of its claim, where the BIR has the opportunity to dispute the same. Further, while it is true that claims for refund are construed strictly against the taxpayer and thus cannot be based on mere

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presumption, the fact remains that mere preponderance of evidence is sufficient to justify their grant. Thus, as aptly ruled by the First Division, respondent Semirara's documentary evidence has substantially justified its claim for refund.

At any rate, tax refunds (or tax credits) are not founded principally on legislative grace, but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact, but also mistake in law. The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case *(Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, 559 SCRA 184).*

Finally, if the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments *(BPI Family Savings Bank vs. CA, CTA & CIR, 330 SCRA 518)*. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another.

Finding no reversible error, we affirm the assailed Decision dated January 4, 2011 and Resolution dated March 18, 2011 rendered by the First Division of this Court in C.T.A. Case No. 7867.

WHEREFORE, premises considered, the instant petition is hereby **DENIED,** and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

Erlinda P. Uy

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has 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.

ERNESTO D. ACOSTA
Presiding Justice