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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING &
DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NOS. 4984, 5008,
5037 & 5061

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
NOV 14 1997

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DECISION

Before Us for consideration are four consolidated cases involving claims for tax refund/issuance of tax credit certificates on input value-added taxes ("VAT" for brevity) paid by petitioner on effectively zero-rated sale of goods and purchase of capital goods pursuant to Section 106 (b) and (c) of the Tax Code for the period covering the first, second, third and fourth quarters of 1991 in the aggregate amount of P178,365,343.25.

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines. It is engaged in the business of mining, production and sale of various mineral products, such as gold, pyrite and copper concentrates, and is duly registered with respondent's Bureau as a VAT entity.

The facts are simple.

On various dates, petitioner filed its Applications for Tax Credit/Refund of VAT Paid (BIR Form No. 2552) corresponding to each of the aforesaid quarters for the calendar year 1991, as follows:

CTA Case No.	Quarter 1991	Date Filed	Amount Claimed	Annex
4984	1st	May 3, 1991	P54,712,868.16	"B" of Petition
5008	2nd	Aug. 28, 1991	51,071,713.09	-do-
5037	3rd	Dec. 20, 1991	41,386,303.00	-do-
5061	4th	Mar. 30, 1992	31,194,459.00	"C" of Petition

Claiming that its applications have not been acted upon by respondent and mindful of the fact that the two-year prescriptive period for a judicial action was about to expire under Section 230 of the Tax Code, petitioner allegedly was constrained to institute the present petitions for review before this Court on dates shown below, to wit:

CTA Case No.	Date Filed
4984	April 20, 1993
5008	July 19, 1993
5037	October 19, 1993
5061	January 19, 1994

This Court observes that on June 16, 1993 or nearly two months after CTA Case No. 4984 was filed, respondent's Bureau resolved petitioner's various claims for the period January, 1991 to December, 1991 (Annexes A and B of petitioner's memorandum, pp. 250-293, CTA records), as follows:

Amount of Claim	₱178,365,343.25
Less: Disallowances	20,741,395.32
Allowable Input Tax	157,623,947.93
Less: Other Deductions:	
Output tax on Miscellaneous Taxable Sales	2,712,658.90
Output tax due on sale of gold to CB	70,079,924.89
Input tax attributable to PASAR's local sale	5,295,046.04
Input tax attributable to Sale to PHILPHOS	4,173,292.53
Input tax allocable to Ending Inventory pursuant to RR 9-89	63,700,080.00
Net Amount Creditable	₱11,662,945.57

Petitioner disagrees with the above findings of respondent's Bureau and thus, alleges in the cases at bar, that it is a zero-rated VAT entity under Section 100 of the Tax Code for the reason that its "main product, copper concentrates, are all for export." (Petitions, p. 1) Hence, petitioner prays for a refund/tax credit of the entire amount of its claims *a quo*, notwithstanding the issuance of a tax credit certificate in its favor amounting to ₱11,662,945.57 based on said findings of respondent's Bureau (Exh. "D").

On the other hand, respondent avers, among others, the following special and affirmative defenses, namely: that the petitions contain no allegation that it is a zero-rated VAT person under the Tax Code; that petitioner has not alleged the dates when the taxes sought to be refunded and/or credited were paid; and, that there is no showing that the taxes sought to be refunded and/or credited were actually paid by the petitioner.

In their memoranda, herein parties exclusively raised legal issues in settling the claims at bar. We note, however, that petitioner's satisfaction of the documentary requirements of a judicial claim for refund or tax credit remains unresolved in so far as this Court is concerned. The legal and factual issues thus confronting this Court are:

1. Whether or not petitioner's sales of gold to Central Bank of the Philippines ("CBP" for short) are subject to the 10% value added tax pursuant to Section 100 of the Tax Code, as amended;

2. Whether or not prejudice will result to petitioner on the retroactive application of respondent's VAT Ruling Nos. 59-92 and 008-92;

3. The validity of the requirement under Revenue Regulations No. 2-88 dated February 15, 1988 and VAT Ruling No. 008-92 that a BOI-registered enterprise export more than 70% of its total annual production for zero rating to apply, such zero rating to be apportioned to the amount of export sales;

4. Whether or not petitioner's sales to Philippine Associated Smelting and Refining Corporation and Philippine Phosphate Fertilizer Corporation ("PASAR" and "PHILPHOS", respectively, for brevity) should be considered as effectively zero-rated transactions under Section 100 (a)

(2) of the Tax Code, as amended; and, if in the affirmative,

5. Whether or not petitioner has factually substantiated its claims;

6. Whether or not petitioner's claims have been filed beyond the two-year prescriptive period set by Section 230 in relation with Section 106 (b) and (c) of the Tax Code; and,

7. The validity of respondent's disallowance of petitioner's claim for VAT refund/credit based on petitioner's failure to comply with the requirement on VAT invoice prescribed under Section 21 of Revenue Regulations No. 5-87 and pursuant to Section 108 (a) of the Tax Code.

After a careful review of all the applicable provisions of law, rules and regulations, and jurisprudence in point, together with the arguments of the parties, this Court resolves to peremptorily rule in favor of the petitioner with respect to the first and second issues, in view of the decision of the Court of Appeals in **Manila Mining Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP-No. 38287, promulgated on June 5, 1997 with entry of judgment on October 2, 1997,** upholding petitioner's legal perspective based solely on the provisions of Section 246 of the Tax Code which prohibits the retroactivity of rulings in case prejudice shall be suffered by the taxpayer. Thus:

"Concisely and pointedly stated by the Office of the Solicitor General in its comment, the issue is whether the denial of petitioner's claim for tax credit/refund premised on the retroactive application of VAT Ruling No. 008-92, issued on January 23, 1992 is valid (Comment, p. 6; Rollo, p 137).

We resolve to reverse the decision.

The Court of Tax Appeals, giving retroactive application to VAT Ruling 008-92 issued on January 23, 1992 and Revenue Memorandum Order No. 22-92 which classify the sale of gold to the Central Bank as local sale subject to 10% VAT, denied petitioner's claim for tax credit/refund.

The applicable law is Section 246 of the National Internal Revenue Code which provides:

> "**Sec. 246.** – ***Non-retroactivity of rulings.*** – Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith."

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 Central Bank from July 1, 1990 to December 31, 1990.

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 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 No. 008-92 deprived petitioner not only of its claim for refund but worse, made petitioner liable for deficiency VAT in the amount of ₱8,012,213.47.

As explained by Presiding Judge Ernesto D. Acosta in his dissenting opinion:

> "The conclusion is irresistible that prejudice will be suffered by petitioner with the retroactive application of VAT Ruling No. 008-92. One has only to compare the petitioner's original claim for refund/tax credit amounting to ₱4,795,135.85 which was denied by the respondent and in addition, has

> assessed petitioner the total amount of P8,012,213.47 as deficiency VAT for the taxable year 1990, the year in question to get a clear picture of the damage which petitioner will suffer as a consequence of the retroactive application of the revocation. Considered in the context of the total denial of the claim and the issuance of a deficiency tax assessment there is a hollow ring to respondent's assertion that there is no prejudice to petitioner's interest. There is therefore utter dearth of merit in respondent's insistence that retroactive application of the revocation will not be prejudicial to the petitioner in the face of the obvious implications of said ruling." (Rollo, pp. 98-99).

In the abovementioned case of *Commissioner of Internal Revenue vs. Court of Appeals, et. al., supra*, promulgated two (2) years after the assailed decision of the Court of Tax Appeals, the Supreme Court ruled: "Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax."

This Court would like to emphasize that the above decision of the Court of Appeals on non-retroactivity of rulings correspondingly admits of the fact, by necessary implication, that the rulings in question are valid when applied prospectively. Such rulings are now, however, limited in time by the Expanded VAT Law under Republic Act No. 7716 which was already in effect at the time of the promulgation of this decision. Under the latter amendatory law, sales of gold to CBP, now *Bangko Sentral* *ng Pilipinas*, have been clearly categorized as zero-rated.

Anent the third issue, petitioner contends the following ratiocination, to wit:

> There is nothing in the Omnibus Investments Code which provides for any 70% export requirement before sales to an exporter could be deemed as constructive export sale. The 70% requirement imposed by Revenue Regulations No. 2-88 is, thus, an effective amendment of the law, i.e., Articles 23 and 77(2) of the Omnibus Investment Law in relation to Section 100(a)(1) of the NIRC, and is therefore an undue exercise of the power to issue rules, which should be deemed illegal and of no effect. x x x (Petitioner's memorandum, p. 233, CTA records)

A close analysis of the arguments of the petitioner would readily tell us that the latter is urging this Court to declare as invalid and contrary to law said Revenue Regulations No. 2-88. On this aspect, this Court is not inclined to favor petitioner.

We observe that the particular issue at bar has not been the subject of discussion during the trial. It was only raised for the first time in petitioner's memorandum leaving the respondent without any opportunity to present her learned views on the matter. In addition, We note in said regulations that the limitation on the percentage of export sales, which is at 70% has been pegged *under the* *rules and regulations of the BOI* [Section 2(a), Revenue Regulations No. 2-88].

Under such circumstances, it would be quite improvident for this Court to attempt any consideration of the validity of said regulations on account of the non-inclusion of the BOI as a proper party to the case at bar. There being no opportunity given to them to be heard on the issue, We could do nothing less but to protect the right of the respondent and the BOI to procedural due process of law which is found to be wanting in the instant issue.

Aside from the foregoing procedural infirmity, it is also relevant to state that the construction given to a statute by administrative agencies charged with the interpretation and application of the statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in a sharp conflict with the governing statute or the Constitution and other laws (**Nestle Philippines, Inc. vs. Court of Appeals, 203 SCRA 504**). The conspicuous absence of any adversarial discussion on the validity of the applicable rules and regulations of BOI in consonance with Revenue Regulations No. 2-88 easily convinces this Court of the failure of the petitioner to demonstrate any sharp conflict between said regulations and the Omnibus Investment Code.

Verily, insofar as this case is concerned, said revenue regulations subsists to have the force and effect of law.

With regard to the fourth and fifth issues , We agree with respondent that, legally speaking, petitioner's sales of copper concentrates to PASAR and pyrite to PHILPHOS are deemed zero-rated export sales provided the requirements of Revenue Regulations No. 2-88 are complied with accordingly (Memorandum for the Respondent, pp. 4-5; pp. 176-177, CTA records).

However, this Court has reached a contrary opinion with respect to respondent's barren assertion that petitioner's evidence in the case at bar, in so far as sales of gold to CBP, pyrite to PHILPHOS, copper concentrates to PASAR and purchase of capital goods are concerned, shows compliance with the factual requirements mentioned in the aforecited regulations (ibid., p. 5).

We note that in the cases at bar, respondent and petitioner have relied on Revenue Regulations No. 2-88 in determining compliance with documentary requirements for a successful refund or issuance of tax credit. Unmentioned by them, however, is the applicable amendment later introduced by Revenue Regulations No. 3-88, dated April 7, 1988, which amended Section 16 of Revenue Regulations No. 5-87 on refunds or tax credits of input tax. Thus:

> **Sec. 2.** Section 16 of Revenue Regulations 5-87 is hereby amended to read as follows:
>
> "**Sec. 16.** ***Refunds or tax credits of input tax.*** -
>
> (a) *Zero-rated sales of goods and services.* - Only a VAT-registered person may be granted a tax credit or refund of value-added taxes paid corresponding to the zero-rated sales of goods or services, to the extent that such taxes have not been applied against output taxes, upon showing of proof of compliance with the conditions stated in Section 8 of these Regulations.
>
> For export sales, the application should be filed with the Bureau of Internal Revenue within two years from the date of exportation. For other zero-rated sales, the application should be filed within two years after the close of the quarter when the transaction took place.
>
> "(b) *Capital Goods.* - *Only* a VAT-registered person may be granted a tax credit or refund of input taxes paid on capital goods, to the extent that such input taxes have not been applied against output taxes. If the applicant is an on-going concern, the application for refund can be made only after the expiration of two successive quarters following the end of the taxable quarter in which the input tax was paid by the VAT-registered person. In this case, if the VAT-registered person bought capital goods in the second quarter, he has to wait for the lapse of

the third and fourth quarters before he can file his application for refund.

"If the purchaser of the capital goods is a newly registered person, he can apply for refund of input taxes on capital goods only after the expiration of 180 days from the date of registration or actual commencement of business operation, whichever comes later. In any case, the application shall be made within two years from the date of payment of the tax.

xxx xxx xxx

"Refund or issuance of Tax Credit Certificates for input taxes on capital goods purchased from BOI-registered pioneer enterprises, partially subject to VAT on sale of their registered products, shall be allowed only to the extent of the input taxes paid by the buyer on the VAT-taxable portion. However, with respect to input taxes deemed paid on the exempt portion of the purchase, these shall be allowed only as credit against output tax due and can neither be refunded nor become the basis for the issuance of a Tax Credit Certificate.

(c) *Claims for tax credits/refunds.* - Application For Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable.

xxx xxx xxx

"3. ***Effectively zero-rated sale of goods and services.***

"i) photo copy of approved application for zero rate if filing for the first time.

"ii) sales invoice or receipt showing the name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.

"iii) evidence of actual receipt of goods or services.

"4. Purchase of capital goods.

"i) original copy of invoice or receipt showing the date of purchase, purchase price, amount of value-added tax paid and description of the capital equipment locally purchased.

"ii) with respect to capital equipment imported, the photo copy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of the value-added tax.

"5. In applicable cases, where the applicant's zero-rated transactions are regulated by certain government agencies, a statement therefrom showing the amount and description of sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold, and date of transaction shall also be submitted.

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

xxx xxx xxx
(Emphasis and underscoring supplied)

A thorough examination of the evidence submitted by the petitioner before this Court reveals outright the failure to satisfy the documentary requirements laid down under the abovecited regulations. Specifically, petitioner was not able to present the following documents, to wit:

a) sales invoices or receipts;

b) evidence of actual receipt of goods;

c) BOI statement showing the amount and description of sale of goods, etc.; and,

d) original copies of invoice or receipt of purchase of local capital goods and photocopies of import entry documents and confirmation receipts issued by the Bureau of Customs.

There is a need to examine the sales invoices or receipts in order to ascertain the actual amount or quantity of goods sold and their selling price. Without these evidence, this Court cannot verify the correctness of petitioner's claims inasmuch as the regulations require that the input taxes being sought for refund should be limited to the portion that is directly and entirely attributable to the particular zero-rated transaction. In this instance, the best evidence of such transaction are the said sales invoices or receipts.

In addition, even if sales invoices are produced, there is the further need to submit evidence that such goods sold were actually received by the buyer, in this case, by CBP, PHILPHOS and PASAR, as the case maybe.

Likewise, its sales to PASAR and PHILPHOS being regulated by BOI, a government agency, petitioner should have submitted in evidence a statement therefrom showing the amount and description of sale of goods, name of the persons or entities to whom the goods were sold and the date of transaction as required by the above regulation. This requirement bears importance when we try to relate it with the more than 70% export sales requirement imposed by Revenue Regulations No. 2-88 to BOI-registered enterprises, i.e., PHILPHOS and PASAR, in order that sellers of goods to them, like the petitioner, can avail of refund of input VAT.

Lastly, this Court cannot determine whether there were actual purchases of capital goods without the required purchase invoice or receipt and confirmation receipts.

Petitioner should have had the foresight to introduce in evidence all of the missing documents abovementioned. Cases filed before this Court are litigated *de novo*. This means, therefore, that party litigants should endeavor to prove, at the first instance, every aspect of their cases, strictly in accordance with the Rules of Court, most especially, on evidence.

In this regard, We would like to stress, at this point, that even the findings of respondent's Bureau, *supra*, on petitioner's applications for refund do not bind this Court. In fact, a review thereof do not reveal any positive consideration of the factual requirements of petitioner's claims. Apparently, they were denied solely on the basis of the legal interpretation made by the respondent in accordance with VAT Ruling No. 008-92.

Also, petitioner's evidence is self-destructive. In its formal offer, it presented the letter/certification of Sycip, Gorres & Velayo & Co.("SGV" for brevity) dated March 9, 1995 and the corresponding list of VAT documents subject of herein refund (Exhs. "A" & "B" to "B-850") in lieu of the actual presentation of voluminous documents. A cursory review of the SGV letter/certification shows the following conclusion, to wit:

> After following the above-described procedures, we have noted that the documents mentioned in the attached summary list actually exist and that the information contained therein pertaining to the said documents are accurate, except for and subject to the following qualifications:

a. Certain invoices and other related documents on file were noted to be photocopies only. We were informed by management that original documents exist but these were pulled out by examiners from the Bureau of Internal Revenue. These documents pertain to transactions the total input VAT of which amount to ₱6,394,484.

b. Certain input tax claims amounting to ₱1,791,271 were not supported with any document.

c. Certain input tax claims amounting to ₱35,227 on importations were supported with photocopies of the official receipt evidencing the payment.

<u>It is our understanding that the above procedures are sufficient for the purpose of the Company. We make no representation regarding the sufficiency of these procedures for such purpose. We did not compare the total of the input tax claimed each quarter against the pertinent VAT returns and books of accounts. The above procedures do not constitute an audit made in accordance with generally accepted auditing standards. Accordingly, we do not express an opinion on the Company's claim for input VAT refund or credit. Had we performed additional procedures, or had we made an audit in accordance with generally accepted auditing standards, other matters might have come to our attention that we would have accordingly reported on.</u>

With the statement by SGV that the procedures employed in coming up with the said letter/certification do not constitute an audit made in accordance with generally accepted auditing standards, this Court has no recourse but to disregard petitioner's supporting list of VAT documents.

Anent the sixth issue, this Court also finds the claims at bar to have been filed beyond the reglementary period of two years. A look into the reckoning dates of the period, which is counted from the first day after the close of the quarters that are the subject of herein refund up to the time of the filing of the respective petitions for review before this Court would demonstrate that the claims falling under Section 106 (b) of the Tax Code have all prescribed. Thus:

Quarter involved	Filing of petition	Period elapsed	Status
CTA Case No. 4984			
January to March 31, 1991	April 20, 1993	2 yrs. & 20 days	Prescribed
CTA Case No. 5008			
April to June 30, 1991	July 19, 1993	2 yrs. & 19 days	Prescribed
CTA Case No. 5037			
July to September 30, 1991	October 19, 1993	2 yrs. & 19 days	Prescribed
CTA Case No. 5061			
October to December 31, 1991	January 19, 1994	2 yrs. & 19 days	Prescribed

This Court has already stated in **AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5187 and 5199, promulgated on October 2, 1997, pp. 8-11,** that the repealing clause under Section 29 of Executive Order No. 273, which initially introduced the VAT provisions in the Tax Code in 1986, has amended or modified Section 230 of the Tax Code in so far as its inconsistency with Section 106 (a) of the same Code is concerned. Similarly, this Court adopts the same rationale enunciated in the latter case to the case at bar. In such regard, Section 230 should be read to additionally include the phrase "after the close of the quarter when zero-rated or effectively zero-rated sales were made" for cases falling under Section 106(b) and the phrase "after the expiration of two succeeding quarters following the quarter in which the importation or local purchase was made, or in the case of a VAT-registered person who is just commencing business, after 180 days from the date of registration or actual start of business operations, whichever comes later" for cases covered under Section 106(c), aside from the phrases "date of payment" and "date of exportation" mentioned in said **AMI** case, when reckoning the starting date of the two year prescriptive period for claiming a refund.

In so far as the claims on purchase of capital goods are concerned under Section 106 (c) of the Tax Code, this Court finds the same to have failed to meet the jurisdictional requisite for a judicial claim for refund in view of petitioner's omission to submit the purchase invoice or receipts correspondingly and to state the actual date of purchase of the capital goods.

Delving into the last remaining issue, this Court believes that the petitioner failed to appreciate the importance of the requirement on "VAT Invoice" prescribed under Section 108 of the Tax Code and Section 21 of Revenue Regulations No. 5-87. Although We have already stated that the instant claims lack sufficient evidence, We have decided to tackle briefly this particular issue for the sake of legal clarity.

Section 21 of Revenue Regulations No. 5-87 simply states that "...[a]ny invoice bearing the VAT registration number of the seller shall be considered as 'VAT Invoice'" and that "...[a]ll purchases covered by invoices other than 'VAT Invoice' shall not be entitled to input taxes." The rationale for the VAT registration number appearing on the purchase invoice is to ensure that the seller is a VAT registered entity subject to the 10% output VAT which is passed on to the buyer, in this case, the petitioner. Such output VAT becomes the input VAT once it is paid by the petitioner. Without the registration number imprinted on the receipt or invoice, respondent has no way of determining whether petitioner has indeed paid the output tax included in the goods purchased.

Further, petitioner should not have accepted invoices without the corresponding VAT registration number because the law is explicitly clear under Section 108 of the Tax Code that every invoice or receipt arising from sale should contain a VAT registration number. To adhere to petitioner's point of view would run afoul to the intendment of the law.

Prescinding from the above, this Court would like to make a clarification on the issue of whether or not petitioner is a zero-rated VAT entity. Respondent has indicated in her Answer in the cases at bar that petitioner has no duly approved application for VAT zero-rating.

After sifting through the records, We find that the petitioner is indeed a zero-rated VAT entity. This is evident from the letter of former BIR Commissioner Bienvenido A. Tan, Jr. dated, April 18, 1988 (Annex "E" of Memorandum for the Petitioner), which specifically approved of the application for VAT zero-rating filed by herein petitioner.

WHEREFORE, in view of the foregoing, the instant claims for refund are hereby **DENIED** on the ground of prescription and insufficiency of evidence. Accordingly, the petitions at bar are hereby **DISMISSED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above 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