REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9627, 9697, 9760, 9830 and 9856

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, ***JJ.***

Promulgated: SEP 08 2023 4:11 p.m.

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DECISION

BACORRO-VILLENA, J.:

Before the Court are the consolidated Petitions for Review filed by petitioner Oceanagold (Philippines), Inc. (**petitioner/Oceanagold**), pursuant to Section 3(a)(1)(2)[1], Rule 4 of the Revised Rules of the Court

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[1] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments

of Tax Appeals (**RRCTA**). They seek a refund or issuance of tax credit certificate (**TCC**) for alleged erroneously paid excise taxes corresponding to the third (3^{rd}) quarter of taxable year (**TY**) 2015 up to the fourth (4^{th}) quarter of TY 2016. The petitions have been previously separately and respectively docketed as CTA Case Nos. 9627[2], 9697[3], 9760[4], 9830[5], and 9856.[6]

In **CTA Case No. 9627**, petitioner seeks to be entitled to a refund of or issuance of a TCC in the amount of ₱70,300,591.31, representing the excise taxes it allegedly erroneously paid to respondent Commissioner of Internal Revenue (**respondent/CIR**) and which the latter illegally wrongfully collected for the period of July to September 2015. It also prays for respondent to be ordered to grant petitioner a refund or tax credit in the said amount of ₱70,300,591.31.

In **CTA Case No. 9697**, petitioner prays that it be entitled to a refund of or issuance of a TCC in the amount of ₱64,785,726.336, representing excise taxes that it allegedly erroneously paid to respondent and which the latter illegally wrongfully collected for the period of October to December 2015. It also asks for the Court to order respondent to grant petitioner a refund or tax credit in the said amount of ₱64,785,726.336.

In **CTA Case No. 9760**, petitioner asks for a refund of or issuance of a TCC in the amount of ₱60,087,441.09, representing excise taxes which it also claimed to have erroneously been paid to respondent and which the latter illegally erroneously collected for the period of January to March 2016. It also seeks for the Court to order respondent to grant petitioner a refund or tax credit in the said amount of ₱60,087,441.09.

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beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

2 Filed on 28 June 2017, Division Docket (CTA Case No. 9627), Volume I, pp. 10-43.
3 Filed on 06 October 2017, Division Docket (CTA Case No. 9697), pp. 10-48.
4 Filed on 31 January 2018, Division Docket (CTA Case No. 9760), Volume I, pp. 10-49.
5 Filed on 02 May 2018, id., Division Docket (CTA Case No. 9830), pp. 10-58.
6 Filed on 13 June 2018, id., Division Docket (CTA Case No. 9856), pp. 10-68.

In **CTA Case No. 9830**, petitioner seeks the refund of or issuance of a TCC in the amount of ₱61,217,146.01, representing excise taxes it erroneously paid to respondent and which the latter allegedly illegally wrongfully collected from April to June 2016 and for the Court to order respondent its refund or tax credit in the said amount of ₱61,217,146.01.

In **CTA Case No. 9856**, petitioner seeks the refund of or the issuance of a TCC in the amount of ₱150,983,805.98, representing excise taxes it erroneously paid to respondent and which the latter allegedly illegally wrongfully collected from July to December 2016 and for the Court to order respondent its refund or tax credit in the said amount of ₱150,983,805.98.[7]

PARTIES OF THE CASE

Petitioner is a corporation organized and existing under the laws of the Philippines, with principal place of business at the 2nd Floor, Carlos J. Valdes Building, 108 Aguirre St., Legaspi Village, 1229 Makati City.[8]

Respondent, on the other hand, is the duly appointed CIR tasked to assess and collect all national internal revenue taxes, fees, and charges, and enforce all forfeitures, penalties, and fines connected therewith. He or she holds office at the Bureau of Internal Revenue (**BIR**) National Office Building, Agham Road, Diliman, Quezon City.[9]

FACTS OF THE CASE

On 09 January 2017, petitioner wrote a letter dated 06 January 2017 to the BIR, requesting the refund of or the issuance of a TCC allegedly covering erroneously paid and/or illegally collected excise taxes for TY 2015, in the aggregate amount of ₱260,126,405.09, on petitioner's removals of copper concentrates and doré bars.[10]

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7 See Statement of the Case, Pre-Trial Order dated 11 March 2020, Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume IV, pp. 1686-a-1687.

8 See Paragraph 1, Stipulation of Facts, Consolidated Joint Stipulation of Facts and Issues (CJSFI), id., p. 1650; Exhibit "P-1", id., pp. 1858-1868.

9 See Par. 2, Stipulation of Facts, CJSFI, id., p. 1650.

10 Exhibit "P-32", id., pp. 2032-2091.

Thereafter, on 22 January 2018, petitioner sent another letter dated 19 January 2018 to the BIR with a similar request covering TY 2016, in the aggregate amount of ₱272,288,393.08.[11]

On 15 May 2018, petitioner received respondent's letter-reply, dated 30 April 2018[12], denying its administrative claim for refund of excise tax, in the amount of ₱272,288,393.08 covering TY 2016.

PROCEEDINGS BEFORE THE COURT

CTA CASE NOS. 9627 and 9697

Alleging respondent's inaction on its claim for refund or issuance of TCC, petitioner filed its Petitions for Review on 28 June 2017[13] docketed as CTA Case No. 9627 and raffled to this Court's First Division; and, on 06 October 2017[14], docketed as CTA Case No. 9697 and raffled to the Second Division.

On 04 September 2017, respondent filed his Answer in CTA Case No. 9627[15], interposing the following affirmative defenses: (1) the Court has no jurisdiction over the case since what has actually been filed, based on the averments in the petition, is not a refund case or for the issuance of a TCC but one that questions the validity of Revenue Memorandum Circular (**RMC**) No. 17-2013[16]; and, (2) petitioner failed to exhaust administrative remedies since it failed to appeal before the Secretary of Finance (**SOF**) before elevating its appeal with the Court of Tax Appeals (**CTA**).

Later, on 26 October 2017, the Pre-Trial Conference was held.[17] Petitioner's Pre-Trial Brief and respondent's Pre-Trial Brief were filed

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11 Exhibit "P-32-a", id., Volume IV, pp. 2092-2150 and Volume V, pp. 2151-2158.

12 Exhibit "P-32-b", id., Volume V, pp. 2159-2160.

13 Supra at note 2.

14 Supra at note 3.

15 Division Docket (CTA Case No. 9627), Volume I, pp. 211-218.

16 Clarifying the Taxes Due from Financial or Technical Assistance Agreement (FTAA) Contractors During "Recovery Periods", issued on 15 February 2013.

17 See Notice of Pre-Trial Conference dated 07 September 2017, Division Docket (CTA Case No. 9627), Volume I, pp. 220-221; See Minutes of the Hearing held on, and Order dated 26 October 2017, Division Docket (CTA Case No. 9627), Volume II, pp. 1071-1073 and 1078-1081, respectively.

separately on 23 October 2017.[18] Still later, on 10 November 2017, the parties filed their "Joint Stipulation of Facts and Issues"[19] (**JSFI**), which the First Division approved in the Resolution dated 27 November 2017.[20] Accordingly, the Pre-Trial for CTA Case No. 9627 was terminated.

On 29 November 2017, petitioner filed its "Omnibus Motion A. To Consolidate CTA Case Nos. 9627 and 9697; B. To Defer Commissioning of Independent Certified Public Accountant".[21] On the same date, for CTA Case No. 9697, petitioner filed a "Motion to Consolidate CTA Case Nos. 9697 and 9627"[22], wherein it prayed for the Court to order: (1) the consolidation of both cases pending before the First Division; and, (2) the abeyance or suspension of the proceedings until the motion for consolidation is resolved.

Thereafter, on 21 December 2017, respondent filed his or her Answer[23], interposing the same affirmative defenses he or she had raised in CTA Case No. 9627. In a Resolution dated 26 January 2018[24], the First Division granted petitioner's motion to consolidate CTA Case Nos. 9627 and 9697. In the same Resolution, the Pre-Trial Conference for CTA Case No. 9697 was scheduled on 15 March 2018. However, the said Conference was later reset to and held on 24 May 2018.[25]

Subsequently, petitioner filed its Pre-Trial Brief[26] on 09 March 2018, while the Court received respondent's Pre-Trial Brief on 21 May 2018.[27]

On 13 June 2018, the parties filed their Consolidated Joint JSFI[28], which the Court approved in its Resolution dated 05 July 2018.[29] The Pre-Trial was henceforth terminated for CTA Case Nos. 9627 and 9697.

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18 Division Docket (CTA Case No. 9627), Volume II, pp. 634-650 and 652-654, respectively.
19 Id., pp. 1082-1096.
20 Id., p. 1100.
21 Id., pp. 1101-1105.
22 Division Docket (CTA Case No. 9697), pp. 205-209.
23 Id., pp. 217-225.
24 Division Docket (CTA Case Nos. 9627 and 9697), Volume II, pp. 1116-1117.
25 See Notice of Resetting dated 08 March 2018, id., Volume III, p. 1137; See Minutes of the Hearing held on, and Order dated 24 May 2018, id., Volume III, pp. 1326-1328 and 1330-1332, respectively.
26 Division Docket (CTA Case Nos. 9627 and 9697), Volume III, pp. 1138-1156.
27 Id., pp. 1321-1324.
28 Id., pp. 1334-1345.
29 Id., p. 1368.

On 25 June 2018, petitioner filed an "Omnibus Motion A. To Consolidate CTA Case Nos. 9627 & 9697, 9760, 9830 and 9856; B. To Defer Commissioning of Independent Certified Public Accountant".[30] On 24 July 2018, petitioner filed its "Motion to Defer Proceedings"[31], requesting for this Court to suspend the proceedings until the said Omnibus Motion is resolved. The Court granted the said Motion to Defer Proceedings in its Resolution dated 09 August 2018.[32]

Pursuant to the Court's Order dated 25 September 2018[33], CTA Case Nos. 9627 and 9697 were transferred from the First Division to the Third Division.

In another Resolution dated 04 December 2018[34], the Court granted petitioner's Omnibus Motion filed on 25 June 2018 and, thus, CTA Case Nos. 9760, 9830 and 9856 were consolidated with CTA Case Nos. 9627 and 9697.

CTA CASE NO. 9760

Again claiming inaction on respondent's part[35], on 31 January 2018, petitioner filed a Petition for Review[36] which was docketed CTA Case No. 9760 and raffled to this Court's Third Division. There, it prayed that it be granted a refund or a TCC in the amount of ₱60,087,441.09, representing excise taxes erroneously paid to, and illegally and wrongfully collected by respondent from January to March 2016.

In his or her Answer[37] filed on 22 March 2018, respondent interposed special and affirmative defenses, to wit: (1) the Court has no jurisdiction over the instant petition; (2) petitioner failed to exhaust administrative remedies; (3) petitioner is not exempt from the payment of excise taxes, thus, petitioner is not entitled to the claim for refund; (4) RMC No. 17-2013 is a valid issuance; (5) RMC No. 17-2013 is not being applied retroactively as it merely called for the strict implementation of

30 Id., pp. 1348-1353.
31 Id., pp. 1375-1377.
32 Id., pp. 1380-1381.
33 Id., p. 1389.
34 Id., pp. 1398-1399.
35 See Par. 4, Petition for Review, Division Docket (CTA Case No. 9760), Volume 1, p. 11.
36 Supra at note 4.
37 Division Docket (CTA Case No. 9760), Volume I, pp. 217-225.

Sections 83 to 89[38] of Republic Act (**RA**) No. 7942[39] or the Philippine Mining Act of 1995; and, (6) revocation of the ruling did not violate the non-impairment clause of the 1987 Constitution.

The Pre-Trial Conference was set on 26 June 2018.[40] Prior thereto, the Pre-Trial Brief for petitioner was submitted on 21 June 2018.[41]

On 25 June 2018, petitioner filed a "Motion to Consolidate"[42], wherein it prayed that an order be issued by the Court: (1) consolidating CTA Case No. 9760 with CTA Case Nos. 9627 and 9697; and, (2) suspending the proceedings until the motion for consolidation is resolved.

In the Resolution dated 07 September 2018[43], the Court granted petitioner's prayer to consolidate CTA Case No. 9760 with CTA Case Nos. 9697 and 9627, subject to the conformity of the First Division.

<u>CTA Case No. 9830</u>

On 02 May 2018, petitioner again filed a Petition for Review[44] which was docketed and raffled to the First Division. It also prayed that it be declared entitled to a refund or issuance of a TCC in the amount of ₱61,217,146.01, representing excise taxes erroneously paid to, and illegally and wrongfully collected by respondent for the period from April to June 2016.

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38 Sec. 83 – Income Taxes
Sec. 84 – Excise Tax on Mineral Products
Sec. 85 – Mine Wastes and Tailing Fees
Sec. 86 – Occupation Fees
Sec. 87 – Manner of Payment of Fees
Sec. 88 – Allocation of Occupation Fees
Sec. 89 – Filing Fees and Other Charges

39 AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION.

40 See Notice of Pre-Trial Conference dated 26 March 2018, Division Docket (CTA Case No. 9760), Volume 1, pp. 227-228.

41 Id., pp. 328-345.

42 Id., Volume II, pp. 619-623.

43 Id., pp. 629-630.

44 Supra at note 5.

Thereafter, on 25 June 2018, petitioner also filed a "Motion to Consolidate"[45] wherein it prays for: (1) the consolidation of CTA Case No. 9830, with CTA Case Nos. 9627 and 9697; and, (2) any further proceeding be held in abeyance until the motion for consolidation is resolved.

On 06 July 2018, respondent filed his or her Answer[46] and essentially interposed the same arguments in the previous Answers.

Pursuant to the Court's Order dated 01 October 2018[47], CTA Case No. 9830 was transferred to this Court's Second Division.

In the Resolution dated 25 October 2018[48], the Court granted petitioner's "Motion to Consolidate" and, thus, consolidated CTA Case No. 9830 with CTA Case Nos. 9627 and 9697, subject to the conformity of the Third Division of this Court.

<u>**CTA Case No. 9856**</u>

In another Petition for Review[49] filed on 13 June 2018, petitioner forwarded similar prayer, *i.e.*, that it be entitled to a refund or TCC in the amount of ₱150,983,805.98, claimed to have been erroneously paid to respondent and which the latter illegally collected for the taxable period of July to December 2016.

Likewise, on 25 June 2018, another "Motion to Consolidate"[50] was filed for: (1) the consolidation of CTA Case No. 9856, with CTA Case Nos. 9627 and 9697; and, (2) the suspension of the proceedings until the motion for consolidation is resolved. The Court granted the same in its Resolution dated 29 August 2018[51], subject to the conformity of the First Division.

45 Division Docket (CTA Case No. 9830), pp. 224-228.
46 Id., pp. 230-239.
47 Id., p. 250.
48 Id., pp. 253-254.
49 Supra at note 6.
50 Division Docket (CTA Case No. 9856), pp. 243-247.
51 Id., pp. 258-259.

Respondent then filed his or her Answer[52] on 12 December 2018, interposing once again the same defenses centered on the absence of jurisdiction and non-entitlement of petitioner to a refund. Further, he or she insisted that: (1) the procedural requirements in the issuance of RMC No. 17-2013 were observed; (2) RMC No. 17-2013 constitutes a part of RA 7942; and, (3) the issuance of RMC No. 74-2013 did not violate the non-impairment clause of the 1987 Constitution.

Still later, the Pre-trial Conference initially set on 19 March 2019 was cancelled and reset to 25 June 2019.[53] However, the same was further reset to and held on 30 January 2020.[54] Prior thereto, petitioner's Pre-Trial Brief for the consolidated cases was submitted on 14 January 2020[55] while the Court received respondent's Consolidated Pre-Trial Brief on 24 January 2020.[56]

On 21 March 2019, respondent transmitted to this Court the BIR Records.[57]

On 20 February 2020, the parties presented their Consolidated JSFI[58] which the Court admitted and approved in its Resolution dated 27 February 2020[59], terminating the Pre-Trial. The Pre-Trial Order dated 11 March 2020[60] was thereafter issued.

During trial, petitioner presented (1) Atty. Joan D. Adaci-Cattiling[61] (**Atty. Adaci-Cattiling**), petitioner's Senior Vice-President for Legal and Human Resources; (2) Hesther Bahiwag[62] (**Bahiwag**),

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52 Id., pp. 261-269.
53 See Order dated 15 March 2019, Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume III, p. 1412.
54 See Minutes of the Hearing and Order both dated 30 January 2020, id., pp. 1646 and 1648-1649, respectively.
55 Id., pp. 1452-1473.
56 Id., pp. 1640-1643.
57 See Compliance dated 21 March 2019, id., pp. 1413-1415.
58 Id., Volume IV, pp. 1650-1663.
59 Id., p. 1665.
60 Id., pp. 1686-a-1698.
61 Exhibit "P-120", Division Docket (CTA Case No. 9627), Volume II, pp. 388-405; Exhibit "P-120-b" and Exhibit "P-120-d", Division Docket (CTA Case Nos. 9627 and 9697), Volume III, pp. 1282-1287 and pp. 1564-1568, respectively; See Minutes of the Hearing and Order both dated 29 September 2020, Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume IV, pp. 1722 and 1724-1725, respectively.
62 Exhibit "P-121" and Exhibit "P-121-b", Division Docket (CTA Case Nos. 9627 and 9697), Volume III, pp. 1161-1170 and pp. 1478-1487, respectively; See Minutes of the Hearing and Order both

petitioner's Accounting Superintendent; and, (3) Elaine E. De Guzman[63], the Court-commissioned Independent Certified Public Accountant (**ICPA**)[64], as its witnesses.

Atty. Adaci-Cattiling testified to the BIR's seizure of 800,000 MT of mineral ores and subsequent seizure of copper concentrates due to an alleged non-prepayment of excise taxes thereon. She further stated that the ores were mined during the five (5)-year recovery period provided in the Financial and Technical Assistance Agreement[65] (**FTAA**) and that petitioner should have been exempted from payment of excise taxes therefor during such period.

Bahiwag corroborated Atty. Adaci-Cattiling's testimony, stating that after petitioner's payment under protest of the assessed excise taxes, the BIR still retained possession of the seized ores. She reiterated the illegality of the said collection, the same being imposed within the recovery period where petitioner should be considered exempt from the payment thereof.

Lastly, the ICPA in her testimony authenticated petitioner's financial documents and found petitioner to have incurred operational expenses amounting to USD310,519,081 as of 31 March 2013.

In the *interim*, on 27 November 2020, the ICPA Report, consisting of eight (8) binders[66], was submitted.

On 21 May 2021, petitioner filed its "Formal Offer of Evidence:" (**FOE**).[67] On 04 June 2021, respondent submitted his or her

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dated 27 October 2020, Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume IV, pp. 1726 and 1727-1728, respectively.

63 Exhibit "P-122", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume IV, pp. 1804-1809; See Minutes of the Hearing and Order both dated 02 March 2021, Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume V, pp. 2248 and 2249-2250, respectively.

64 See Oath of Commission dated 29 September 2020, Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume IV, p. 1723; See Minutes of the Hearing and Order both dated 29 September 2020, Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume IV, pp. 1722 and 1724-1725, respectively.

65 Exhibit "P-2", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume IV, pp. 1869-1922.

66 Exhibit "P-123", id., pp. 1729-1798.

67 Id., pp. 1815-1857.

"Comment/Manifestation (Re: Petitioner's Formal Offer of Evidence)".[68] In a Resolution dated 05 April 2022[69], the Court admitted petitioner's exhibits, *except* for the following:

1. Exhibits "P-28-a" and "P-29", for failure to present the originals for comparison; and,

2. Exhibits "P-394", "P-3321 to P-3322", "P-4186", "P-4259", "P-5210", "P-5582", "P-5672-A", "P-7557 to P-7558", "P-8617", "P-8973", "P-15853", "P-16067 to P-16068", "P-16126", "P-19365 to P-19367", "P-19657 to P-19659", "P-20569", "P-20924", "P-21085", "P-22076 to P-22078", "P-22079 to P-22129", "P-22360", "P-23014", "P-23249 to P-23251", "P-26606-I", "P-26746", "P-27240 to P-27241", "P-27308 to P-27311", "P-27609", "P-27613", "P-33824", "P-36322 to P-36324", "P-36804 to P-36805", "P-40041", "P-42696", "P-48519", "P-49058", "P-51601 to P-51786", "P-51791 to P-52235", "P-52238 to P-52774", "P-52776 to P-52781", "P-52783 to P-52893", "P-52895 to P-53349", "P-53867-AO to P-53867-AS", and "P-53867-BT to P-53867-BY", for not being found in the records.

In the same Resolution, the Court noted the manifestation of respondent's counsel that he will no longer present testimonial evidence, as the document to be identified by his witness is a common exhibit (already identified by petitioner's witness as Exhibit "P-32-b" and that the same can be found in the BIR Records of the cases).

On 17 May 2022, petitioner filed its "Motion for Reconsideration (on the Resolution dated April 5, 2022)"[70] (**MR of the 05 April 2022 Resolution**). However, respondent failed to file his or her comment thereto.[71]

In the Resolution dated 19 July 2022[72], the Court partially granted the MR on the 05 April 2022 Resolution and admitted Exhibits "P-5582", "P-21085", "P-22076 to P-22078", "P-22079 to P-22129", "P-51601 to P-51786", "P-51791 to P-52235", "P-52238 to P-52774", "P-52776 to

[68] See Resolution dated 22 June 2021, id., Volume V, p. 2252.
[69] Id., pp. 2265-2278.
[70] Id., pp. 2280-2285.
[71] *Per* Records Verification dated 21 June 2022, id., p. 2290.
[72] Id., pp. 2294-2299.

P-52781", "P-52783 to P-52790", "P-52792 to P-52893", "P-52895 to P-53063-A", "P-53063-C to P-53117-E", "P-53118 to P-53349", "P-53867-AO to P-53867-AS", and "P-53867-BT to P-53867-BY". It still *denied* Exhibits "P-28-a" and "P-29" for petitioner's failure to present the originals for comparison; Exhibits "P-4186", "P-4259", "P-5672-A", "P-16126", "P-49058", "P-52791" for not being found in the records; and, Exhibits "P-8973", "P-20924", "P-33824", "P-48519", "P-53063-B", and "P-53117-F", for being completely blackened or almost black.

On 25 August 2022[73], petitioner submitted its Memorandum. Respondent, however, failed to file his or her memorandum.[74] The present consolidated cases were then submitted for decision on 09 September 2022.[75]

ISSUES

The parties forwarded the following issues for the Court's resolution, to wit:

> I.
> WHETHER THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT PETITION.
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> II.
> WHETHER PETITIONER OCEANAGOLD (PHILIPPINES), INC. IS ENTITLED TO THE REFUND OR TAX CREDIT OF EXCISE TAXES IT PAID UNDER PROTEST FROM JULY 2015 TO DECEMBER 2016, IN THE AGGREGATE AMOUNT OF ₱407,374,710.75.
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> III.
> WHETHER REVENUE MEMORANDUM CIRCULAR NO. 17-2013 (THE "ASSAILED RMC") IS VALID.[76]

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[73] Id., pp. 2300-2352.
[74] *Per* Records Verification dated 26 August 2022, id., p. 2355.
[75] See Resolution dated 09 September 2022, id., p. 2356.
[76] See Proposed Stipulation of Issues, CJSFI, id., Volume IV, p. 1651.

ARGUMENTS

Petitioner argues that this Court has jurisdiction over the present petition pursuant to RA 1125[77] and the RRCTA, and Section 229[78] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. It adds that RMC No. 17-2013[79] is null and void for failure to observe the proper procedural requirements before its issuance and that petitioner's tax exemption privilege under the FTAA[80] dated 20 June 1994 is a contractual tax exemption that the government has granted in exchange for a valid and material consideration; thus, it is protected by the non-impairment clause of the 1987 Constitution.

Moreover, petitioner argues that: (1) it is entitled to the refund or TCC of the excise taxes it paid under protest from July 2015 to December 2016 in the aggregate amount of ₱407,374,710.75; (2) it is exempt from excise tax until the end of the recovery period, pursuant to the FTAA dated 20 June 1994, Section 81[81] of the Philippine Mining Act, and Section 236[82] of the Department of Environment and Natural Resources (**DENR**) Administrative Order (**DAO**) No. 95-23[83]; (3) it incurred valid pre-operating expenses amounting to US$310,519,081.00 as of 31 March 2013, which it has not fully recovered as of 31 December 2016; (4) that petitioner is still within the 5-year recovery period when it paid excise taxes during the period of July 2015 to December 2016; (5) its excise tax

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77 AN ACT CREATING THE COURT OF TAX APPEALS.

78 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* —

79 Supra at note 16.

80 Supra at note 65.

81 **SEC. 81.** *Government Share in Other Mineral Agreements.* —

82 **SEC. 236.** Government Share in FTAA - The Government share in a financial or technical assistance agreement shall consist of, among others things, the contractor's corporate income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign owned corporation and all such other taxes, duties and fees as provided for under existing laws.

The Government share in an FTAA shall be negotiated by the government and the contractor taking into consideration (a) capital investment of the project (b) risks involved (c) contribution of the project to the economy (d) technical complexity of the project and (e) other factors that will provide for a fair and equitable sharing between the parties.

The collection of Government share shall commence after the FTAA contractor has fully recovered its pre-operating, exploration and development expenses, inclusive. The period of recovery which is reckoned from the date of commercial operation shall be for a period not exceeding five years or until the date of actual recovery, whichever comes earlier. For clarification, the Government's entitlement to its share shall commence after the FTAA contractor has fully recovered its pre-operating, exploration and development stage expenses, inclusive and the contractor's obligations under Chapter XXVII of the rules and regulations do not arise until this time.

83 IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE "PHILIPPINE MINING ACT OF 1995".

exemption is confirmed in BIR Ruling No. 10-2007; and, (6) since petitioner is exempt from excise tax during the so-called recovery period, the excise taxes paid for the period of July 2015 to December 2016 (covering removals of copper concentrates and doré bars) were erroneously paid or illegally collected.

Respondent, on the other hand, reiterates that: (1) this Court has no jurisdiction over the petitions; (2) petitioner failed to exhaust remedies; (3) petitioner is not exempt from payment of excise taxes and is not entitled to the claim for refund; (4) RMC No. 17-2013 is a valid issuance; (5) RMC No. 17-2013 is not being applied retroactively as it merely called for the strict implementation of Sections 83 to 89[84] of

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[84]

CHAPTER XV
TAXES AND FEES

Section 83
Income Taxes
After the lapse of the income tax holiday as provided for in the Omnibus Investments Code, the contractor shall be liable to pay income tax as provided in the National Internal Revenue Code, as amended.

Section 84
Excise Tax on Mineral Products
The contractor shall be liable to pay the excise tax on mineral products as provided for under Section 151 of the National Internal Revenue Code: *Provided, however,* That with respect to a mineral production sharing agreement, the excise tax on mineral products shall be the government share under said agreement.

Section 85
Mine Wastes and Tailings Fees
A semi-annual fee to be known as mine wastes and tailings fee is hereby imposed on all operating mining companies in accordance with the implementing rules and regulations. The mine wastes and tailings fee shall accrue to a reserve fund to be used exclusively for payment for damages to:

a. Lives and personal safety;
b. Lands, agricultural crops and forest products, marine life and aquatic resources, cultural resources; and
c. Infrastructure and the revegetation and rehabilitation of silted farm lands and other areas devoted to agriculture and fishing caused by mining pollution.

This is in addition to the suspension or closure of the activities of the contractor at any time and the penal sanctions imposed upon the same.

The Secretary is authorized to increase mine wastes and tailings fees, when public interest so requires, upon the recommendation of the Director.

Section 86
Occupation Fees
There shall be collected from any holder of a mineral agreement, financial or technical assistance agreement or exploration permit on public or private lands, an annual occupation fee in accordance with the following schedule:

a. For exploration permit - Five pesos (P5.00) per hectare or fraction thereof per annum;

RA 7942; (6) the issuance of RMC No. 17-2013 and the revocation of the ruling did not violate the non-impairment clause of the 1987 Constitution; (7) petitioner is not entitled to a refund or issuance of tax credit for alleged erroneously paid excise taxes; and, (8) claims for refund are construed strictly against the taxpayer and in favor of the government.

RULING OF THE COURT

After a careful review of the records and the parties' contrasting arguments, the Court finds the petitions devoid of merit.

THE COURT HAS JURISDICTION OVER
THE PRESENT CASES.

The Court finds that it is properly clothed with the requisite authority to resolve all the issues raised in these cases. It is noted that respondent insists that the central issue of the instant petitions is the validity of RMC No. 17-2013. Respondent also contends that petitioner failed to exhaust administrative remedies since it did not appeal first

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b. For mineral agreements and financial or technical assistance agreements - Fifty pesos (P50.00) per hectare or fraction thereof per annum; and
c. For mineral reservation - One hundred pesos (P100.00) per hectare or fraction thereof per annum.

The Secretary is authorized to increase the occupation fees provided herein when the public interest so requires, upon recommendation of the Bureau Director.

Section 87
Manner of Payment of Fees
The fees shall be paid on the date the mining agreement is registered with the appropriate office and on the same date every year thereafter. It shall be paid to the treasurer of the municipality or city where the onshore mining areas are located, or to the Director in case of offshore mining areas. For this purpose, the appropriate officer shall submit to the treasurer of the municipality or city where the onshore mining area is located, a complete list of all onshore mining rights registered with his office, indicating therein the names of the holders, area in hectares, location, and date registered. If the fee is not paid on the date specified, it shall be increased by twenty-five per centum (25%).

Section 88
Allocation of Occupation Fees
Thirty per centum (30%) of all occupational fees collected from holders of mining rights in onshore mining areas shall accrue to the province and seventy per centum (70%) to the municipality in which the onshore mining areas are located. In a chartered city, the full amount shall accrue to the city concerned.

Section 89
Filing Fees and Other Charges
The Secretary is authorized to charge reasonable filing fees and other charges as he may prescribe in accordance with the implementing rules and regulations.

before the SOF prior to elevating the case to this Court as provided under Section 4[85] of the NIRC of 1997, as amended.

Unfortunately, contrary to respondent's theories, the issue is not confined to the validity of RMC No. 17-2013 but, more appropriately, on respondent's inaction and denial of petitioner's administrative claims for refund or tax credit filed on 09 January 2017[86] and 22 January 2018[87], respectively. The claims for refund or tax credit were made pursuant to Section 204(c) of the NIRC of 1997, as amended, which provides:

> ...
>
> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> ...
>
> (c) Credit or refund taxes **erroneously or illegally** received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.[88]
>
> ...

In relation thereto, Section 229 provides:

> ...
>
> 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

---

85 SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

86 Exhibit "P-32", supra at note 10.

87 Exhibit "P-32-a", supra at note 11.

88 Emphasis supplied.

> 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 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.[89]
>
> ...

In *CBK Power Company Limited v. Commissioner of Internal Revenue*[90], the Supreme Court held:

> ...
>
> Sections 204 and 229 of the NIRC pertain to the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. ...
>
> ...

The following are the pertinent dates relative to petitioner's claims for refund or tax credit:

Quarter (Q) and year	Date of Payment	Amount	Two (2)-Year Prescriptive Period	Date of Administrative Claim	Date of Judicial Claim
Q3 2015	July 1, 2015[91]	₱21,354,901.27	July 1, 2017	January 9, 2017[92]	
	August 18, 2015[94]	22,326,518.12	August 18, 2017		

89 Emphasis supplied.
90 G.R. Nos. 193383-84, 14 January 2015; Emphasis in the original text.
91 Exhibits "P-35", "P-36" and "P-37", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume V, pp. 2162-2164.
92 Exhibits "P-32", id., supra at note 10.
94 Exhibits "P-38", "P-39" and "P-40", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume V, pp. 2166-2167.

	August 27, 2015[95]	5,222,296.67	August 27, 2017		June 28, 2017[93]
	September 10, 2015[96]	21,396,875.25	September 10, 2017		
Q4 2015	October 14, 2015[97]	4,097,439.21	October 14, 2017		October 6, 2017[98]
	November 10, 2015[99]	21,105,565.64	November 10, 2017		
	December 3, 2015[100]	21,733,663.42	December 3, 2017		
	December 17, 2015[101]	6,598,015.94	December 17, 2017		
	December 18, 2015[102]	11,251,042.15	December 18, 2017		
Q1 2016	February 5, 2016[103]	5,053,245.89	February 5, 2018	January 22, 2018[104]	January 31, 2018[105]
	February 9, 2016[106]	24,068,629.18	February 9, 2018		
	March 15, 2016[107]	23,662,364.92	March 15, 2018		
	March 15, 2016[108]	7,131,533.90	March 15, 2018		
	March 18, 2016[109]	133,788.75	March 18, 2018		
	March 18, 2016[110]	37,878.45	March 18, 2018		
Q2 2016	May 3, 2016[111]	6,017,805.51	May 3, 2018		May 2, 2018[112]
	May 6, 2016[113]	24,335,178.44	May 6, 2018		
	June 22, 2016[114]	7,722,130.29	June 22, 2018		
	June 23, 2016[115]	23,142,031.77	June 23, 2018		
Q3 2016	July 29, 2016[116]	25,951,813.05	July 29, 2018		June 13, 2018[117]
	August 9, 2016[118]	5,716,938.23	August 9, 2018		

95 Exhibits "P-41", "P-42" and "P-43", id., pp. 2168-2170.
93 Division Docket (CTA Case No. 9627), supra at note 2.
96 Exhibits "P-44", "P-45" and "P-46", id., pp. 2171-2173.
97 Exhibits "P-50", "P-51" and "P-52", id., pp. 2177-2179.
98 Division Docket (CTA Case No. 9697), supra at note 3.
99 Exhibits "P-53", "P-54" and "P-55", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume V, pp. 2180-2182.
100 Exhibits "P-56", "P-57" and "P-58", id., pp. 2183-2185.
101 Exhibits "P-59", "P-60" and "P-61", id., pp. 2186-2188.
102 Exhibits "P-62", "P-63" and "P-64", id., pp. 2189-2191.
103 Exhibits "P-65", "P-66" and "P-67", id., pp. 2192-2194.
104 Exhibits "P-32-a", supra at note 11.
105 Division Docket (CTA Case No. 9760), supra at note 4.
106 Exhibits "P-68", "P-69" and "P-70", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume V, pp. 2195-2197.
107 Exhibits "P-71", "P-72" and "P-73", id., pp. 2198-2200.
108 Exhibits "P-76", "P-77" and "P-78", id., pp. 2203-2205.
109 Exhibits "P-74" and "P-75", id., pp. 2201-2202.
110 Exhibits "P-79" and "P-80", id., pp. 2206-2207.
111 Exhibits "P-81", "P-82" and "P-83", id., pp. 2208-2210.
112 Division Docket (CTA Case No. 9830), supra at note 5.
113 Exhibits "P-84", "P-85" and "P-86", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume V, pp. 2211-2213.
114 Exhibits "P-87", "P-88" and "P-89", id., pp. 2214-2216.
115 Exhibits "P-90", "P-91" and "P-92", id., pp. 2217-2219.
116 Exhibits "P-93", "P-94" and "P-95", id., pp. 2220-2222.
117 Division Docket (CTA Case No. 9856), supra at note 6.
118 Exhibits "P-96", "P-97" and "P-98", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume V, pp. 2223-2225.

	September 1, 2016[119]	23,903,019.49	September 1, 2018		
	September 19, 2016[120]	4,815,680.09	September 19, 2018		
Q4 2016	October 4, 2016[121]	25,198,540.49	October 4, 2018		
	November 25, 2016[122]	27,530,549.10	November 25, 2018		
	November 25, 2016[123]	4,341,133.83	November 25, 2018		
	December 12, 2016[124]	6,426,208.33	December 12, 2018		
	December 19, 2016[125]	27,099,923.37	December 19, 2018		
	Total	₱407,374,710.75			

From the foregoing, it is clear that petitioner's administrative and judicial claims for refund were filed within the two-year period prescribed by law. Thus, indubitably, the Court has jurisdiction over the instant petitions.

With the issue of jurisdiction settled, We shall now proceed to determine whether petitioner is entitled to the reliefs sought.

PETITIONER FAILED TO PROVE THAT THE EXCISE PAYMENTS WERE ERRONEOUS OR ILLEGAL.

In claiming that it is entitled to the refund or tax credit of excise taxes it paid under protest from July 2015 to December 2016 (in the aggregate amount of ₱407,374,710.75), petitioner argues that it is exempt from the payment of excise tax until the end of the recovery period (pursuant to the FTAA dated 20 June 1994, Section 81 of the Philippine Mining Act, and Section 236 of DAO No. 95-23).

We find petitioner's claim bereft of merit.

For petitioner's claims to prosper or for the subject excise taxes paid to be successfully refunded, it must prove that the government, through respondent, has illegally collected the subject excise taxes. The

119 Exhibits "P-99", "P-100" and "P-101", id., pp. 2226-2228.
120 Exhibits "P-102", "P-103" and "P-104", id., pp. 2229-2231.
121 Exhibits "P-105", "P-106" and "P-107", id., pp. 2232-2234.
122 Exhibits "P-108", "P-109" and "P-110", id., pp. 2235-2237.
123 Exhibits "P-111", "P-112" and "P-113", id., pp. 2238-2240.
124 Exhibits "P-114", "P-115" and "P-116", id., pp. 2241-2243.
125 Exhibits "P-117", "P-118" and "P-119", id., pp. 2244-2246.

long-settled rule is that the burden lies on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit.[126] Unfortunately, petitioner failed to discharge this burden. Section 81 of the Philippine Mining Act of 1995[127] provides:

> ...
> SEC. 81. ***Government Share in Other Mineral Agreements.*** — ...
> ...
>
> The Government share in financial or technical assistance agreement shall consist of, among other things, the contractor's corporate income tax, **excise tax**, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws.
>
> The **collection of Government share** in financial or technical assistance agreement **shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses**, exploration, and development expenditures, inclusive.[128]
> ...

Moreover, the FTAA[129], which was executed on 20 June 1994 between petitioner and the government, provides the following:

> ...
>
> SECTION XI
> FISCAL REGIME
>
> ...
>
> 11.2 Recovery of Preoperating Expenses, Property Expenses and Taxes Paid During the Recovery Period. The CONTRACTOR shall have a period of up to **five (5) Contract Years, counted from the Date of Commencement of Commercial Production within which to recover its: (a) Preoperating Expenses; and (b) Property expenses incurred during the period in which Preoperating Expenses are recovered,** after which period only shall the right of the GOVERNMENT to share in the Net Revenue, as hereinafter defined, accrue.

---

126 *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, 15 January 2014.
127 Supra at note 39.
128 Emphasis supplied.
129 Exhibit "P-2", supra at note 65.

However, if after the lapse of the period mentioned in the preceding paragraph, the CONTRACTOR has not yet fully recovered its Preoperating Expenses and Property expense incurred during the Period in which Pre-operating Expenses were incurred, it shall be allowed to recover the same as a depreciation allowance deductible against the distributable Net Revenues over the period of the succeeding three Contract Years.

...

All taxes, duties, fees, costs, levies and imposts paid by the CONTRACTOR and which are detrimental to the CONTRACTOR's recovery of Preoperating Expenses and Property Expenses during the five (5) Contract Years contemplated in this Section shall be recoverable by the CONTRACTOR, whenever possible during the year(s) such expenditures were actually incurred. **Any amount not recovered shall be deducted from the GOVERNMENT's Share** as more specifically provided in Section 11.5 of this Agreement, unless legislation is required to allow the necessary deductions, in which case the deductions shall be made only after the appropriate legislation has been passed.

All the items recoverable by the CONTRACTOR under this Section 11.2, including the on-going Mineral Exploration costs incurred by the CONTRACTOR during the five-year recovery period, shall be recovered from Net Revenue, as the term 'Net Revenue' is defined under Section 11.4 of this Agreement.[130]

...

Relevantly, certain phrases in the FTAA, as used in the foregoing stipulations, mean as follows:

...

SECTION II
DEFINITIONS

...

2.10 "Commercial Production" means the production of sufficient quantity of minerals to sustain economic viability of Mining Operations as specified in the approved Work Program. Production of copper, gold and silver ore required to test and/or develop a processing system or supply a pilot plant used for such testing shall not be considered in the determination of Commercial Production.

...

[130] Emphasis supplied and underscoring in the original text.

2.12 "Contract Year" means a period of twelve (12) consecutive months counted from the Effective Date of this Agreement or from the anniversary of such Effective Date.

2.13 "CONTRACTOR" means Arimco Mining Corporation and **its assignee or assignees of any interest under this Agreement** provided such assignment of any such interest is accomplished pursuant to the provisions hereof.

2.14 "Date of Commencement of Commercial Production" shall mean the first day of the calendar quarter following the quarter in which production equals **fifteen percent (15%) of the project's initial annual design capacity as outlined in the Declaration of Mining Feasibility** as hereinafter defined.

2.15 "Declaration of Mining Feasibility" means a document proclaiming the presence of minerals in a specific site that are recoverable by socially acceptable, environmentally safe and economically sound methods, as required to be submitted by the CONTRACTOR under Section VII of this Agreement.[131]

...

In relation thereto, the DENR issued DAO No. 99-56[132] providing the guidelines of the Fiscal Regime portion of the FTAAs executed pursuant to the Philippine Mining Act of 1995, to wit:

...

SECTION 3. *Fiscal Regime of a Financial or Technical Assistance Agreement*

The Financial or Technical Assistance Agreement which the Government and the FTAA Contractor **shall enter into shall have a Fiscal Regime embodying the following provisions**:

...

d. *Payment of Government Taxes and Fees*. The Contractor shall promptly pay all the taxes and fees required by the Government in carrying out the activities covered in the FTAA and in such amount, venue, procedure and time as stipulated by the particular law and implementing rules and regulations governing such taxes and fees subject to all rights of objection or review as provided for in relevant laws, rules and regulations. **In case of non-collection as covered by Clause 3-g-1 of this Section, the Contractor shall follow the prevailing procedures for availment of such non-collection in**

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131 Emphasis supplied and underscoring in the original text.

132 Guidelines Establishing the Fiscal Regime of Financial or Technical Assistance Agreements.

accordance with pertinent laws, rules and regulations. Where prevailing orders, rules and regulations do not fully recognize and implement the provisions covered by Clause 3-g-1 of this Section, the Government shall exert its best efforts to ensure that all such orders, rules and regulations are revised or modified accordingly.

e. *Recovery of Pre-Operating Expenses*. Considering the high risk, high cost and long term nature of Mining Operations, the Contractor is given the opportunity to recover its Pre-Operating Expenses incurred during the pre-operating period, after which the Government shall receive its rightful share of the national patrimony. **The Recovery Period, which refers to the period allowed to the Contractor to recover its Pre-Operating Expenses as provided in the Mining Act and the IRR, shall be for a maximum of five (5) years or at a date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-operating Expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first**. The basis for determining the Recovery Period shall be the actual Net Cash Flows from Mining Operations and actual Pre-Operating Expenses converted into its US dollar equivalent at the time the expenditure was incurred.

"Net Cash Flow" means the Gross Output less Deductible Expenses, Pre-Operating Expenses, Ongoing Capital Expenditures and Working Capital charges.

f. *Recoverable Pre-Operating Expenses*. Pre-Operating Expenses for recovery which shall be approved by the Secretary upon recommendation of the Director shall consist of actual expenses and capital expenditures relating to the following:

1. Acquisition, maintenance and administration of any mining or exploration tenements or agreements covered by the FTAA;
2. Exploration, evaluation, feasibility and environmental studies, production, mining, milling, processing and rehabilitation;
3. Stockpiling, handling, transport services, utilities and marketing of minerals and mineral products;
4. Development within the Contract Area relating to the Mining Operations;
5. All Government taxes and fees;

...

The foregoing recoverable Pre-Operating Expenses shall be subject to verification of its actual expenditure by an independent audit recognized by the Government and chargeable against the Contractor.

g. *Government Share.*

1. *Basic Government Share.* The following taxes, fees and other such charges shall constitute the Basic Government Share:

a) **Excise tax on minerals;**
b) Contractor's income tax;
c) Customs duties and fees on imported capital equipment;
d) Value-added tax on the purchase of imported equipment, goods and services;
e) Withholding tax on interest payments on foreign loans;
f) Withholding tax on dividends to foreign stockholders;
g) Royalties due the Government on Mineral Reservations;
h) Documentary stamps taxes;
i) Capital gains tax;
j) Local business tax;
k) Real property tax;
l) Community tax;
m) Occupation fees;
n) All other local Government taxes, fees and imposts as of the effective date of the FTAA;
o) Special Allowance, as defined in the Mining Act; and
p) Royalty payments to any Indigenous People(s)/Indigenous Cultural Community(ies).

From the Effective Date, the foregoing taxes, fees and other such charges constituting the Basic Government Share, if applicable, shall be paid by the Contractor: *Provided*, **That above items (a) to (g) shall <u>not be collected</u> from the Contractor <u>upon the date of approval of the Mining Project Feasibility Study up to the end of the Recovery Period</u>.** Any taxes, fees, royalties, allowances or other imposts, which should not be collected by the Government, **but nevertheless paid by the Contractor and are not refunded by the Government before the end of the next taxable year, shall be included in the Government Share in the next taxable year.** Any Value-Added Tax refunded or credited shall not form part of Government Share.[133]

...

[133] Emphasis and underscoring supplied.

Undeniably, in accordance with the foregoing provisions, petitioner, as assignee[134] and now the contractor to the said FTAA, is entitled to *not* pay the excise taxes on minerals, among others, from the date of approval of the Mining Project Feasibility Study up to the end of the Recovery Period (**which must not exceed five (5) years from the date of commencement of commercial production**).

Petitioner avers further that since it had already advised[135] the Secretary of DENR that "on 26 February 2013, the Didipio Project was able to mill 301,903 tons and achieve the 15% production capacity", the date of commencement of the commercial production is on **01 April 2013** (the first day of the second calendar quarter) and the subject excise payments were made within the *Recovery Period* (*i.e.*, from **01 April 2013 to 31 March 2018**).

We disagree.

Section 272 of DAO No. 96-40[136] states rather clearly:

> ...
>
> CHAPTER XXX
> Transitory and Miscellaneous Provisions
>
> SEC. 272. Non-Impairment of Existing Mining/Quarrying Rights. — All valid and existing mining lease contracts, permits/licenses, leases pending renewal, Mineral Production Sharing Agreements, FTAA granted under Executive Order No. 279, at the date of the Act shall remain valid, shall not be impaired and shall be recognized by the Government: *Provided,* That the provisions of **Chapter XXI on Government share in Mineral Production Sharing Agreement and of Chapter XVI on incentives of the Act shall immediately govern and apply to a mining Lessee or Contractor** unless the mining Lessee or Contractor indicates its intention to the Secretary, in writing, not to avail of said provisions: *Provided, further,* That no renewal of mining lease contracts shall be granted after the expiration of its term: *Provided, finally,* That such

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134 Exhibits "P-4", "P-4-a", "P-5", and "P-6", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume III, pp. 1933-1953.

135 Exhibit "P-28", id., Volume IV, p. 2030.

136 Revised Implementing Rules and Regulations of Republic Act No. 7942, Otherwise known as the Philippine Mining Act of 1995.

leases, Production-Sharing Agreements, FTAAs shall comply with the applicable provisions of these implementing rules and regulations.[137]

...

Chapter XXI of the same DAO provides:

...

CHAPTER XXI
Government Share in Mineral Agreements/FTAAs

...

SECTION 214. *Government Share in FTAA.* —The Government share in an FTAA shall consist of, among other things, the Contractor's corporate income tax, excise tax, Special Allowance, withholding tax due from the Contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign-owned corporation and all such other taxes, duties and fees as provided for in existing laws.

...

The collection of Government share shall commence after the FTAA Contractor has fully recovered its pre-operating, exploration and development expenses, inclusive. **The period of recovery which is reckoned from the date of commercial operation shall be for a period not exceeding five (5) years or until the date of actual recovery, whichever comes earlier.**[138]

...

The same DAO defines the term "Commercial Production" to be -

...

i. "Commercial Production" refers to the production of sufficient quantity of minerals to sustain economic viability of mining operations **reckoned from the date of commercial operation as declared by the Contractor or as stated in the feasibility study,** ***whichever comes first.***[139]

...

It is noted that, on 18 March 2005, petitioner submitted a Partial Declaration of Mining Feasibility (**PDMF**) stating that it found "sufficient ore reserves and diluted resource of 23.7 million tonnes of

[137] Emphasis supplied.
[138] Emphasis supplied.
[139] Emphasis and italics supplied.

1.8g/t Au and 0.64% Cu ... and such ore reserves have been delineated to sustain the mining operation of the Corporation for some 14 years," and that "mining operation ... will process gold and copper at 2 million tonnes *per* annum..."[140]

Subsequently, on 11 October 2005, the DENR issued an Order[141] approving the PDMF subject to the following condition, among others:

> ...
>
> I. That **the conduct of mining operation in the Contract Area** subject of the Declaration of Mining Project Feasibility **shall be undertaken in accordance with** the existing applicable laws, their **implementing rules and regulations**, and **the pertinent provisions of the FTAA**; ...[142]
>
> ...

A further scrutiny of the FTAA reveals the following:

> ...
>
> SECTION VII
> FEASIBILITY STUDY AND RELINQUISHMENT
>
> 7.1 <u>Mining Feasibility</u>. During the Exploration Period, the CONTRACTOR shall conduct feasibility studies for any part of the Exploration Contract Area as may be warranted. At anytime prior to six (6) months from the expiration of the Exploration Period, the CONTRACTOR, if it elects to transform the Exploration Contract Area into a Mining Area as provided in Section VIII of this Agreement, shall submit a **Declaration of Mining Feasibility with a Work Program and Budget for development for the next succeeding three (3) years indicating therein the Mining Area**. Areas not delineated as part of the Mining Area shall be relinquished pursuant to the following section.
>
> Failure of the CONTRACTOR to submit a Declaration of Mining Feasibility within the prescribed period shall be considered a waiver of the CONTRACTOR's right to transform the Exploration Contract Area into a Mining Area as provided in Section VIII of this Agreement.[143]
>
> ...

---

[140] Exhibit "P-7", Division Docket (CTA Case Nos. 9627, 9697, 9760, 9830 and 9856), Volume IV, pp. 1954-1955.
[141] Exhibit "P-8", id., pp. 1956-1957.
[142] Emphasis supplied.
[143] Emphasis supplied.

Anent thereto, Sections IX, X, and XX of the FTAA provide:

...

SECTION IX
DEVELOPMENT AND CONSTRUCTION PERIOD

9.1 Timetable. The CONTRACTOR shall complete the development of the mine including the **construction of production facilities within thirty-six (36) months from the date of the approval of the Declaration of Mining Feasibility**, subject to such **extension based on justifiable reasons as the Secretary may approve.**

9.2 Work Program and Budget. The CONTRACTOR shall develop and construct the production facilities in the Mining Area in accordance with the Work Program included in the Declaration of Mining Feasibility referred to in Section 7.1 of this Agreement, spending at least US$50,000,000 less any amount of Exploration expenditures it has already spent.

...

SECTION X
PRODUCTION PERIOD

10.1 Timetable. The CONTRACTOR shall submit to the Government, through the Secretary, copy furnished the Director of the Mines and Geosciences Bureau, **within thirty (30) days from the completion of the construction facilities a Work Program for a period of three (3) years.** The CONTRACTOR **shall** **commence Commercial Production according to the period(s) specified in the approved Work Program** and the CONTRACTOR shall advise the Government within fifteen (15) days therefrom that Commercial Production has commenced. Failure of the CONTRACTOR to commence Commercial Production within the period, except as may be excused by *Force Majeure* as stated in Section 20.4 hereof or other justifiable causes, shall be considered a substantial breach of this Agreement.

...

SECTION XX
OTHER PROVISIONS

...

20.4 Suspension of Obligations.

(a) Any failure or delay on the part of any party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.

(b) If Mineral Exploration and/or Mining Operations are delayed, curtailed or prevented by such Force Majeure causes, then the time for enjoying the rights and carrying out the obligations thereby affected, the term of this Agreement and all rights and obligations hereunder shall be extended for a period equal to the period thus involved.

(c) The party whose ability to perform its obligations is affected (i) **shall promptly give Notice to the other in writing of any such delay or failure in performance, the expected duration thereof, and its anticipated effect on the party expected to perform**, and (ii) shall use its best efforts to remedy such delay, except that neither party shall be under any obligation to settle a labor dispute.

(d) This Agreement and the performance of all the obligations of the CONTRACTOR under the same shall be deemed suspended if the prosecution of the CONTRACTOR'S obligations under this Agreement is prevented by delays in obtaining approvals of the GOVERNMENT, both national and local, including statutory authorities, to any matter or aspect of this Agreement in which such approvals are necessary, provided that the delays are not due to the fault of the CONTRACTOR.[144]

...

Based on the foregoing provisions of the FTAA, petitioner had 36 months or three (3) years from the approval of its PDMF on 11 October 2005, or until 11 October 2008, to develop and construct mining production facilities. Thereafter, it had to submit, within 30 days, another Work Program for the period of 3 years for the actual production activities (including the commencement of commercial production).

Clearly from the foregoing, petitioner should have commenced commercial operation and production *within the 4th quarter of 2008 up to 4th quarter of 2011*. Consequently, **the recovery period would have ended in the 3rd quarter of 2015 to fourth quarter of 2016** (subject periods of the instant refund), regardless of petitioner's declaration of the commencement of commercial production on 27 March 2013.

Accordingly, the subject payments of excise taxes that were made between **01 July 2015** and **19 December 2016** (which are beyond the

144 Emphasis supplied.

recovery period) are not rendered erroneous nor illegal. Moreover, it bears stressing that, in its Petitions[145], petitioner avers:

> ...
>
> 11. In 2008, petitioner was constrained to halt further mine development in the Didipio Project due to escalating costs and uncertainty in the financial markets. Petitioner, thus, put the Didipio Project on "care and maintenance."
>
> 12. In 2010, however, after completing a strategic review and securing further financing, petitioner resumed development work in the Didipio Project.
>
> 13. In late 2012, petitioner successfully commenced the commissioning of the Didipio Project, and mined and stockpiled approximately 800,000 MT of ore for further processing. As part of the commissioning process, petitioner commenced ore milling operations to produce copper concentrates. Petitioner expected to make its very first sale and delivery of copper concentrates in the first quarter of 2013.
>
> ...

However, petitioner did not submit pertinent supporting documents (or notices) to the Government stating the reason and duration of the delay and work programs in order to ascertain the date of the recovery period.

Even assuming *arguendo* that the subject payments of excise taxes were made within the recovery period, DAO No. 99-56[146] and the FTAA[147] state categorically that, in case the excise taxes paid are not recovered, the same would merely form part of the Government's share or the same shall be deducted from the latter's share.

Furthermore, the FTAA also requires that in order for the said taxes to be recoverable, it must be shown to be *"detrimental to the CONTRACTOR's recovery of Preoperating Expenses and Property Expenses"*.[148]

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145 See Petition for Review, Division Docket (CTA Case No. 9627), Volume I, pp. 14-15; Petition for Review, Division Docket (CTA Case No. 9697), p. 15; Petition for Review, Division Docket (CTA Case No. 9760), p. 15; Petition for Review, Division Docket (CTA Case No. 9830), p. 15; Petition for Review, Division Docket (CTA Case No. 9856), p. 15.

146 Supra at note 132.

147 Exhibit "P-2", supra at note 65.

148 Id.

Section II of the FTAA provides for a definition of terms. The definition of the word "detrimental" is, however, not provided therein. With the absence of a technical definition, resort to the plain or literal meaning of the word is in order.[149] The term "detriment" means "[a]ny loss or harm suffered in person or in property".[150] Thus, *per* the subject FTAA, petitioner must show that the collection of excise tax during the Recovery Period resulted in loss or harm in its person or property.

Unfortunately, petitioner failed to prove that the payments of the subject excise taxes, during the said 5-year period, were detrimental to its recovery of the said pre-operating and property expenses. As it is, the records of these cases do not yield any evidence showing that such excise tax payments resulted in losses (to petitioner).

Moreover, petitioner failed to present evidence that its payments of excise taxes had an adverse effect on its financial position and/or performance as it did not also offer in evidence its Audited Financial Statements during the subject period. Even the ICPA Report is silent as to a supposed detrimental effect of the payments of the excise taxes during the Recovery Period.

With the above disquisitions, this Court thus finds no erroneous or illegal collection of excise taxes that may be refunded to petitioner.

On a final note, it is well established that actions for tax refund or credit, as in the instant cases, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[151] The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit.

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[149] See *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, 25 November 2009.

[150] BLACK'S LAW DICTIONARY (Rev. 4th Ed. 1968), p. 537.

[151] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

WHEREFORE, the foregoing premises considered, the Petitions for Review in CTA Case Nos. 9627, 9697, 9760, 9830 and 9856 filed by petitioner Oceanagold (Philippines), Inc. are hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice