REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NOS. 4429, 4495 and 4575

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 23 1995

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D E C I S I O N

These cases involve three separate petitions filed by petitioner to toll the running of the two-year prescriptive period for the filing of claims for the issuance of tax credit certificates or refund of input tax attributable to exportations of certain goods, pursuant to Section 204 of the National Internal Revenue Code. The antecedent facts may be summarized as follows:

Petitioner is a domestic corporation engaged in the mining business, specifically the exploration, development and operation of mining properties for purposes of commercial production and the marketing of mine products. It is a VAT-registered enterprise, with VAT Registration No. 31-9-000027 issued on

January 1, 1988. Sometime in January 1988 petitioner filed an application for zero rating of its sales of mine products, which application was duly approved by respondent Commissioner of Internal Revenue.

CTA CASE NO. 4429

On May 20, 1988, petitioner filed its VAT return covering the period January 1 to April 30, 1988, stating that during the period covered, petitioner made zero-rated sales in the total amount of ₱808,329,075.00. Likewise, on August 22, 1988, petitioner filed its VAT return for the period May 1 to July 31, 1988, stating therein that for the period covered, its zero-rated sales totaled ₱1,010,264,729.22. Subsequently, under dates of December 20, 1988 and February 8, 1989, petitioner filed separate applications for tax credit for input taxes paid during the periods covered by its two VAT returns mentioned above, in the total amount of ₱64,832,374.57 broken down as follows:

Period Covered	Amt. Applied For
Jan. 1 - April 30, 1988	₱34,449,817.71
May 1 - July 31, 1988	30,382,556.86
	₱64,832,374.57

CTA CASE NO. 4495

On November 21, 1988, petitioner filed its VAT return covering the period August 1, 1988 to October 31, 1988, reflecting therein zero-rated sales totaling ₱892,186,250.13. Thereafter, on February 29, 1989, petitioner likewise filed its VAT return covering the period November 1, 1988 to January 31, 1989. Under dates April 28, 1989 and November 13, 1989, petitioner filed separate applications for tax credit of input taxes totaling ₱43,614,437.88, for the periods covered by its two aforesaid VAT returns. Said claim may be broken down as follows:

Period Covered	**Amount Applied for**
Aug. 1, 1988 - Oct. 31, 1988	₱30,146,774.47
Nov. 1, 1988 - Jan. 31, 1989	13,467,663.41
	₱43,614,437.88

CTA CASE NO. 4575

On May 22, 1989, petitioner filed its VAT return covering the period February 1, 1989 to April 30, 1989, reflecting zero-rated sales in the total amount of ₱787,532,806.43. On August 21, 1989, it filed its VAT return for the period May 1, 1989 to July 31, 1989, showing zero-rated sales in the total amount of

₱791,534,245.29. Thereafter, under dates March 8, 1990 and May 17, 1990, petitioner filed separate applications for tax credit of input tax for the period covered by the two foregoing returns, in the total amount of ₱23,294,221.77 broken down as follows:

Period Covered	Amount Applied For
Feb. 1 - April 30, 1989	₱ 7,030,261.29
May 1 - July 31, 1989	16,263,960.48
	₱23,294,221.77

Upon investigation of petitioner's applications, respondent Commissioner ascertained that there were certain inaccuracies and falsities in petitioner's VAT returns. Thus, for instance, for the First Quarter of 1988, petitioner forwarded input tax of ₱32,170,693.27 to the Second Quarter of the same year. On the Second Quarter, it forwarded input taxes to in the amount of ₱19,131,794.60 to the Third Quarter; and on the Third Quarter, it forwarded input taxes of ₱8,446,126.13 to the Fourth Quarter of 1988. And for the First Quarter of 1989, petitioner forwarded input taxes of ₱7,420,150.43 to the Second Quarter of the same year. In addition to the foregoing, respondent Commissioner also disallowed input taxes attributed to petitioner's sales of gold to the Central Bank of the Philippines.

Thus, after due investigation, respondent Commissioner determined that petitioner was entitled to a total tax credit of only ₱81,991,810.91 attributed to its direct export sales. This amount was broken down as follows:

For 1988

First Quarter	₱ 18,284,739.32
Second Quarter	14,281,567.17
Third Quarter	15,673,510.77
Fourth Quarter	13,467,663.41
	₱ 61,707,480.67

For 1989

First Quarter	₱ 7,030,261.29
Second Quarter	13,284,330.24
	₱ 20,284,330.24

On the other hand, respondent Commissioner disallowed a total of ₱88,187,431.88, representing input taxes on petitioner's sales of gold to the Central Bank. The disallowance was based on VAT Ruling No. 8-92 dated January 23, 1992 and VAT Ruling No. 59-92 dated April 28, 1992, which revoked previous rulings of respondent Commissioner which, in effect, treated sales of gold to the Central Bank as constructive exports for purposes of zero-rating and instead, consider such sales subject to the 10% Value-Added Tax. Hence, these petitions.

In these consolidated petitions, petitioner contends that the retroactive application of VAT Ruling No. 8-92 violates Section 246 of the Tax Code, which provides that -

> "Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner 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."

It further argues that such retroactive application would be prejudicial to it. Thus:

> "The undue prejudice caused to the petitioner by a retroactive application of VAT Ruling No. 008-92 is evident. It was issued only on January 23, 1992 which is years after petitioner has religiously relied on and complied with previous BIR issuances and rulings that sales of gold to the Central Bank are considered as export sales. The petitioner has also relied on CB Circulars which have the effect of law. Hence, these sales should be considered as zero-rated and the VAT input taxes corresponding to such sales are refundable.
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The petitioner has no other activities subject to the 10% VAT. The conversion of the input taxes into cost deductions for income tax purposes is of no use to petitioner because it has little or no income to deduct these from. The fact remains, that the petitioner was not able to claim cash refunds which it can use to finance its operations. Neither were (sic) petitioner able to obtain tax credits which it may use freely in the payment of their (sic) internal revenue tax liabilities. What is worse, is the fact that petitioner was not able to pass on the 10% VAT to the Central Bank, on the portions corresponding to local sales, if these sales should not have been treated as export sales. To assess petitioner the 10% VAT on these sales would indeed be unduly prejudicial.

Furthermore, it is undeniable that petitioner relied on BIR's various issuances that sales of gold to the Central Bank are zero-rated, sold its gold produce to the CB without passing or billing the VAT on these sales, which it could have done. It stands now prejudiced to the extent of 1/11 of the purchase price of its gold sales to the Central Bank and could not now demand and secure payment of said amount from the Central Bank. It is highly improbable that the Central Bank will ever pay the prejudiced 1/11 purchase price and there is no way petitioner to (sic) recoup such loss but, left nothing to shoulder the damage.

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Incontestable (sic), petitioner shall be prejudiced by a retroactive application of VAT Ruling 8-92 because the sales of gold with (sic) the Central Bank were consummated on January 1, 1988 to July 31, 1989. At that time, petitioner in good faith relied on the representations and issuances of the BIR that sales of gold to the Central Bank were export sales subject to zero-rate. Thus, petitioner's reliance on these administrative issuances was the operative fact to which legal consequences are attached and petitioner (sic), in its vain attempt to revoke previous rulings, cannot hide from the doctrine of estoppel because, to allow him (sic) is tantamount to bad faith, betrayal of trust and inconsistent with justice and fair play." (Petitioner's Memorandum, pp. 18-22)

We are not persuaded by petitioner's arguments.

In *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (CTA Case No. 4794, April 5, 1994), We held that the retroactive application of VAT Rulings Nos. 8-92 and 59-92 may not necessarily be proscribed by Section 248 of the Tax Code, especially so where there is no showing of actual and imminent prejudice to the taxpayer as a result thereof. Thus:

> "We hold that respondent Commissioner is correct in contending that petitioner will not suffer any undue prejudice from a retroactive application of VAT Rulings No. 008-92 and 59-92. As pointed out by respondent in his Ruling No. 59-92,
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> > 'When the same mining companies, relying upon the aforementioned earlier BIR rulings, sold their gold to the CB at zero rate VAT, they did not fully pass on to the CB the cost of their respective input taxes. Said input taxes remained in their possessions (sic). The only repercussion of the revocation of the said earlier rulings is - they will be prevented the option of claiming the said input taxes as refund. But, they remain entitled to use the same in paying their output taxes in

> connection with their other sales transactions which are subject to the 10% VAT. It follows, there is no prejudice that may ensue from the retroactive application of the said revocation because what they only lose is the right to have their input taxes refunded which, in the first place and under the law, they are any way, clearly not entitled to. Granting for the sake of argument, that they have no other sales transactions subject to 10% VAT against which their input taxes may be used in payment, then, it follows, they are constituted as the final persons against which the costs of the tax passed-on shall legally stop and rest, hence, in this connection, said input taxes may already be legally converted as cost available as deduction for income tax purposes. On this score, they are also not prejudiced by the retroactive application of the said ruling.
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> Petitioner's reliance on the ruling in the ABS-CBN case is clearly misplaced. In the first place, there is nothing in said decision which absolutely prohibits a retroactive application of the rules, regulations, rulings or decisions promulgated or rendered by respondent Commissioner pursuant to his rule-making authority. On the contrary, the decision clearly supports what We have stated here. Moreover, the factual situation obtaining in the <u>ABS-CBN</u> case is clearly not on all fours with the instant case."

We find the foregoing ruling applicable to the instant cases. The admitted evidence on record does not show that petitioner will be unduly prejudiced by the retroactive application of the questioned BIR rulings.

The mere fact that petitioner may now be precluded from passing on the 10% VAT on its sales to the Central Bank and may thus no longer have such input taxes refunded in cash cannot necessarily be equated with undue prejudice since VAT Rulings No. 8-92 and 59-92 still provide petitioner avenues for relief, that is by converting said input taxes as cost deductions for income tax purposes. Petitioner has not shown by means of competent evidence that such alternative relief notwithstanding, it still stands to suffer undue economic prejudice in the sense that the amount which it would be entitled to deduct as costs for income tax purposes is substantially less than the amount of input taxes to which it could have been entitled to a refund if the questioned rulings were not applied retroactively. In other words, absent any showing that the alternatives available to petitioner under the questioned rulings are clearly inadequate, any claimed prejudice on petitioner's part would at best be speculative.

In the case of *Atlas Mining Consolidated and Development Corporation* (supra) cited above, We ruled that the prejudice referred to in Section 246 of the Tax Code must be actual and imminent, as opposed to one that is contingent or speculative. Thus:

> "The question therefore, is: will petitioner be prejudiced by a retroactive application of VAT Rulings No. 008-92 and 59-92. Petitioner argues in the affirmative, saying that by such revocation, it is now 'unnecessarily exposed to a possible assessment for VAT taxes on the sales to CB, PASAR and Philphos.' This argument is, however, purely speculative and therefore untenable. The fact is that petitioner has not been assessed by respondent Commissioner any deficiency tax as a result of the retroactive application of VAT Rulings No. 008-92 and 59-92. For the prohibition in Section 246 of the Tax Code to apply, it must be shown that the taxpayer will suffer actual and imminent, opposed to contingent and speculative, prejudice as a result of the retroactive application."

In an attempt to differentiate its situation from that obtaining in the **Atlas** case, petitioner filed an addendum dated June 30, 1994 wherein it claimed that it has been assessed by respondent Commissioner for deficiency value-added taxes for the years 1988 to 1989, and that it has in fact already protested such assessment. We find petitioner's contention unmeritorious.

In the first place, Section 35, Rule 132 of the Rules of Court provides that only such evidence as has been formally offered and admitted shall be considered by the court in resolving a case. Thus:

> **SEC. 35. Offer of evidence.** -- The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

In the instant cases, the assessment and demand letters which were allegedly sent by respondent Commissioner to petitioner appear to be dated October 19, 1992. On the other hand, the records show that petitioner concluded the presentation of its evidence on November 11, 1993. On November 17, 1993, it filed its formal offer of evidence, which was ruled upon by the Court on December 21, 1993.

The demand letters referred to in petitioner's Addendum dated June 30, 1994 were not presented during the trial of these cases, nor were they formally offered and admitted into evidence by the Court. Petitioner does not even pretend that said letters partake of the nature of newly-discovered evidence which it could not have presented during the trial. If petitioner truly believed that these documents were of such vital importance to its case, it should have taken steps to ensure that these were properly brought before the Court. It would be highly improper for the Court to consider such documents at this stage, not only because of the clear and express mandate of Section 35 of Rule 132 but also because to hold otherwise would be tantamount to depriving respondent Commissioner of her right to due process of law since it was not given ample opportunity to present its own evidence to rebut petitioner's claim.

In the second place, petitioner itself admits that the alleged assessment is the subject of protest proceedings still pending before respondent Commissioner, a fact which is confirmed by the latter in her Memorandum dated April 8, 1994 (Respondent's Memorandum, p.9). The Court cannot pre-empt the decision of respondent Commissioner in said protest case by ruling that the alleged assessment, assuming that the same was indeed the result of the retroactive application of VAT Rulings No. 008-92 and 59-92, is improper and would be prejudicial to petitioner. This issue is still properly within the primary jurisdiction of respondent Commissioner of Internal Revenue, and under Section 7(1) of Republic Act No. 1125, Our jurisdiction is limited to reviewing decisions of respondent Commissioner on disputed assessments (*Philippine American Life Insurance Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2981, June 6, 1986*). As held in a long line of cases, this Court is a court of special jurisdiction; as such, it can take cognizance only of such matters as are clearly within its jurisdiction (*see, Commissioner of Internal Revenue vs. Villa, 22 SCRA 3, Fernandez vs. Commissioner of Internal Revenue, CTA Case No. 3432,* *February 25, 1983, Philippine American Life Insurance Company, Inc. vs. Commissioner of Internal Revenue*, *supra*).

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED.** No pronouncement as to costs.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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