REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NOS. 4416, 4457
4513 & 4573

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 11 1998

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# DECISION

The pivotal legal issues which are presented for our consideration in these four (4) cases are (1) whether or not petitioner's sale of gold, copper concentrates and pyrite to the Central Bank (now Bangko Sentral Ng Pilipinas), Philippine Smelting and Refining Corporation (PASAR) and Philippine Phosphate Inc. (Philphos), respectively, during the four quarters of 1988 are subject to the 10% value added tax (VAT) under Section 100 of the Tax Code or should it be considered as effectively zero-rated under paragraph (a)(2) of said Section 100, *ibid.*, and (2) whether or not VAT Ruling Nos. 008-92 and 59-92 are valid and can be applied retroactively. Ancillary to these, are the issues of the validity of the requirement under VAT Ruling No. 008-92 regarding 70% export sales requirement and the

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disallowances made by respondent on petitioner's claim for VAT refund/credit.

Petitioner is a domestic corporation engaged in the business of mining, production and sale of various mineral products, consisting principally of copper concentrates and gold. It is duly registered with the BIR as a VAT enterprise with Registration No. 32-A-6-002224.

Reproduced below are the pertinent facts of each case:

C.T.A. CASE NO. 4416

On April 20, 1988, petitioner filed with respondent its Value-Added Tax (VAT) Return for the first quarter (January to March) of 1988 (Exh. A)

On May 16, 1988, petitioner filed an administrative amount claim for refund with respondent of the amount of ₱33,489,768.00, allegedly representing its excess input VAT for the said 1st quarter of 1988.

The same was not acted upon by respondent, hence, on December 29, 1989, petitioner filed with this Court the instant petition for review.

C.T.A. CASE NO. 4457

On July 20, 1988, petitioner filed with respondent its VAT Return for the second quarter (April to June) of 1988 (Exh. B).

On August 26, 1988, petitioner filed an administrative claim for refund with respondent of the amount of ₱54,633,475.07, allegedly representing its excess input VAT for the second quarter of 1988 (Exh. F).

The same was not acted upon by respondent, hence, on May 23, 1990, petitioner filed with this Court the instant petition for review.

C.T.A. CASE NO. 4513

On October 20, 1988, petitioner filed with respondent its VAT Return for the third quarter (July to September) of 1988 (Exh. C).

On November 10, 1988, petitioner filed an administrative claim for refund with respondent of the amount of ₱30,190,111.06, allegedly representing its excess input VAT for the third quarter of 1988 (Exh. G).

The same was not acted upon by respondent, hence, on November 21, 1990, petitioner filed with this Court the instant petition for review.

C.T.A. CASE NO. 4573

On January 20, 1989, petitioner filed with respondent its VAT Return for the fourth quarter (October to December) of 1988 (Exh. D).

Allegedly on January 31, 1989, petitioner filed an administrative claim for refund with respondent of the amount of ₱49,048,911.76, representing its excess input VAT for the fourth quarter of 1988 (Exh. H).

The same was not acted upon by respondent, hence, on January 18, 1991, petitioner filed with this Court the instant petition for review.

Inasmuch as these four (4) cases involve the same parties and substantially the same factual and legal issues, they are consolidated in this decision. It is also important to note that these consolidated cases were originally submitted for decision on October 2, 1996 but were instead held in abeyance pending final adjudication by the appellate court of a similar issue (see

Resolution, dated January 17, 1997). On June 5, 1997 and February 6, 1998, the Court of Appeals promulgated decisions in Manila Mining Corporation vs. Commissioner of Internal Revenue and Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, respectively, thus it is now proper to dispose of the instant issues in the light of these two decisions.

Petitioner argues that its sale of gold to the Central Bank, copper concentrates to PASAR and pyrite to PHILPHOS, should be classified as effectively zero-rated transactions pursuant to Section 100(a)(2) of the Tax Code. It rationalized that under the said provision of law, there are two(2) distinct categories of zero-rated transactions, namely, (1) direct exports and (2) constructive exports or effectively zero-rated sales. Thus:

> **SEC. 100.** ***Value added tax on sale of goods.*** – (a) *Rate and base of tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor; Provided That the following sales by VAT-registered persons shall be subject to 0%:
>
> (1) Export sales; and
>
> (2) Sales to persons or entities whose exemptions under special laws or international agreements to which the Philippines is a

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signatory effectively subjects such sales to zero rate.

"Export Sales" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. "Foreign currency denominated sales", means sales to nonresidents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines. (Underscoring Ours)

x x x x x x x x x

To bolster its position, petitioner cites the following provisions of Section 169 of Central Bank Circular No. 960 and Articles 23, 39 and 77 of the Omnibus Investments Code of 1987 (Executive Order No. 226) as the special laws that makes its transaction effectively zero-rated, to wit:

**SEC. 169.** ***Privilege of export-oriented firm.*** Gold Producers shall qualify as export-oriented firms even if their entire output is sold to the Central Bank. (C.B. Circular No. 960)

**ART. 23.** ***"Export Sales*** x x x

*Provided*, that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; Provided, further, that without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) Sales to bonded manufacturing warehouses of export oriented manufacturers;

(2) Sales to export processing zones; x x x."
(E.O. 226)

**ART. 39.** ***Incentives to Registered Enterprises*** - x x x

(K) *Tax Credit for Taxes and Duties on Raw Materials.* - Every registered enterprise shall only enjoy a tax credit equivalent to the National Internal Revenue Taxes and Customs Duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof exported directly or indirectly by the registered enterprises: Provided, however, that the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as - a separate item in the sales invoice. (E.O. 226)

**ART. 77.** ***Tax Treatment of Merchandise in the Zone.*** - x x x

(2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone; shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction. x x x (E.O. 226) (Underscoring Ours)

Further, petitioner assailed BIR VAT Ruling No. 008-92, dated January 23, 1992, and VAT Ruling No. 59-92, dated April 20, 1992, (which was subsequently issued consistent with VAT Ruling No. 008-92) for being violative of Section 246 of the Tax Code, stated hereunder, and the Omnibus Investments Code of 1987, as well as Section 169 of Central Bank Circular No. 960. It said that on the basis of the aforesaid rulings, petitioner was assessed by respondent the output VAT on

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its sales of gold to the CB, copper concentrates to PASAR and pyrite to PHILPHOS, for the second, third and fourth quarters of 1988. Thus, it said that respondent retroactively applied with prejudice the said Ruling to petitioner.

> **SECTION 246.** ***Non-retroactivity of rulings.*** - 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.

Petitioner pointed out that, insofar as pertinent, the aforesaid BIR VAT Ruling No. 008-92, reads:

> 1. That Section 100 (A) of the New Internal Revenue Code, as amended by the VAT Law, limits the term Export Sales only to direct exporters and to local sales qualified as foreign currency denominated sales;
>
> 2. That as regards Revenue Regulations No. 2-88 which provides among other things to wit:
>
>> Sale of raw materials to export-oriented BOI registered enterprises whose export sales, under rules and regulations of the Board of Investments, exceed seventy percent

(70%) of total annual production shall be subjected to zero-rate. (Sec. 2)

The said proviso has no legal basis under the VAT Law, but, nonetheless, because of the government policy consideration. (The BIR is temporarily not pursuing (its) plan to recommend the revocation of the proviso of RR No. 2-88.

3. That by way of exception. (S)ales of raw materials by export-oriented BOI-registered enterprises whose export sales under Rules and Regulations of the Board of Investments exceed seventy percent (70%) of total production, shall also be subject to zero-rate for VAT purposes, pursuant to RR No. 2-88;

4. That indirect or constructive export sales arising under Articles 23 and 77 [of the Omnibus Investments Code (EO 226)], if the sales of supplies are substantially to exporters and there are proofs of actual exportation and payment in foreign currency may be submitted for processing and shall be acted upon by this Office on a case to case basis and, for the same reasons justifying RR No. 2-88;

5. That (l)ocal sales of goods which by fiction of law are considered export sales (e.g., the Export Duty Law considers sales of gold to the Central Bank of the Philippines, as export sales), (sic). This transaction shall not be considered export sale for VAT purposes;

6. That (t)he amount of input tax refund allowable to the aforementioned suppliers of raw materials to BOI-registered enterprises, pursuant to RR No. 2-88 shall only be restricted to the percentage of export sales of the BOI-registered enterprise, duly established and endorsed by the BOI at the time the suppliers of raw materials applied for zero-rating, thus, if in the said BOI endorsements, the applicant/supplier will sell raw materials to a BOI-registered enterprise whose export sales, per the BOI endorsement, is only 71% of its annual production, the supplier's input tax refund shall be limited only to his input taxes

attributable to the said 71% export sales of his buyer-BOI registered enterprise.

Accordingly, invoking the abovementioned special laws, petitioner said that since its sales of gold to the CB, copper concentrates to PASAR and pyrite to PHILPHOS are zero-rated sales, therefore, not subject to any output tax, it is entitled to the refund of the input tax it paid during the year 1988.

On the other hand, respondent in her answers raised the following special and affirmative defenses:

C.T.A. CASE NO. 4416

5. Verification of petitioner's claim for VAT credit for the 1st quarter of 1988 show that it is entitled only to the amount of ₱13,451,536.15, computed as follows:

| | | |
|---|---|---|
| Claim for tax credit | | ₱33,489,768.00 |
| Less: Disallowances: | | |
| 1) 10% unpaid VAT on importation due to suspension under LO 1416 | ₱14,371,467.00 | |
| 2) Purchases of goods and services not supported by VAT invoices and purchases of services without official receipts | 3,788,792.29 | |
| 3) Input taxes claimed without purchase invoices | 334,312.56 | |
| 4) Input taxes paid for hauling services (subject to 3% tax on common carriers) | 714,281.36 | |
| 5) 10% VAT on sale of | | |

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| | |
|---|---|
| silver | 369,909.64 |
| 6) 10% VAT on sale of taxable goods | 459,469.00 |
| TOTAL Disallowances. . . . . . . . . . . . . . | 20,038,231.85 |
| Amount of VAT credit . . . . . . . . . . . . . | ₱13,451,536.15 |

6. The 10% VAT on importation in the amount of ₱14,371,467.00 was disallowed as petitioner did not pay said amount because of the availment of LOI 1416 suspending payment of taxes and duties;

7. In an action for refund and/or tax credit herein petitioner has the burden of showing that it is entitled to the refund or tax credit and has complied with the provision of Section 106 of the Tax Code, as amended;

8. Claims for refund and/or tax credit are construed strictly against the claimant since the claim for refund is in the nature of an exemption form (sic) taxation (***Manila Electric Co. vs. CIR 1 67 SCRA 351***).

C.T.A. CASE NO. 4457

5. Petitioner's application for issuance of tax credit certificate/refund for VAT paid for the 2nd quarter of 1988 is pending investigation;

6. In an action for refund and/or tax credit herein petitioner has the burden of showing that it is entitled to the refund or tax credit and has complied with the provision of Section 106 of the Tax Code, as amended;

7. Claims for refund and/or tax credit are construed strictly against the claimant since the claim for refund is in the nature of an exemption from taxation (***Manila Electric Company vs. CIR, 67 SCRA 351***).

C.T.A CASE NO. 4513

4. The petition states no cause of action. Specifically, it contains no

allegation to support petitioner's claim that it is a zero-rated VAT person. Moreover, petitioner failed to allege the date when the tax sought to be refunded was paid which is an indispensable requirement (***Manufacturer's Bank and Trust Co., Inc. vs. CIR, CTA Case No. 1659, November 29, 1965***).

5. Neither has petitioner shown that the tax sought to be refunded was actually paid.

6. Petitioner, who has the burden of proving that it is entitled to tax refund, has failed to show that the tax subject of its claim for refund was erroneously or illegally collected. Neither has it shown that it has complied with the provisions of Section 230 of the Tax Code which is a mandatory requirement before an action for tax refund may be filed.

7. Indeed, the failure of petitioner to show compliance with the above requirement renders the present suit subject to outright dismissal for lack of cause of action (Johnston Lumber Co., Inc. vs. CTA & Col. of Int. Rev., G.R. No. L-9222, April 23, 1957).

8. Granting that the tax sought to be refunded had actually been paid by the petitioner, the same is presumed to have been collected in accordance with law.

9. Finally, a claim for tax refund partakes of the nature of an exemption from taxation, hence, must be construed strictly against the petitioner (***Insular Lumber Co. vs. CTA, 104 SCRA 710 [1981]***).

C.T.A. CASE NO. 4573

4. Petitioner is not entitled to any refund and/or tax credit in the instant case.

The allegations of the petition disclose that this is an action to compel the respondent to refund and/or tax credit the petitioner with the amount of ₱49,048,911.76 on the ground that since its main product, copper concentrates, are all for export then it is a zero-rated Value Added Tax (VAT), person pursuant to Sec. 100(a)(1) of the Tax Code.

It is significant to note, at the outset, that the petitioner contains no allegation in support of petitioner's claim that it is a zero-rated VAT person under the Tax Code. Neither does petitioner allege the date when the tax sought to be refunded and/or credited was paid. Nor is there any showing that the tax sought to be refunded and/or credited was actually paid by petitioner. For these reasons, the petition clearly states no cause of action that would entitle it to the relief prayed for.

5. In an action for refund of taxes, the burden of proof is upon the taxpayer to show that the taxes paid or remitted were erroneously or illegally collected. The failure to sustain the said burden is fatal to an action for refund.

It is likewise incumbent upon the petitioner to establish that it has complied with the provisions of Section 230 of the Tax Code regarding the prescriptive period within which to file the claim for refund. In addition to this, granting, but not admitting, that payment was made, the same is presumed to have been collected in accordance with law.

In the instant case, the petitioner has failed to establish that the tax, subject of its claim for refund and/or tax credit, was erroneously or illegally collected by respondent. Neither has it shown that it has complied with the provisions of Section 203 of the Tax Code.

6. Tax exemptions, it must be emphasized, are not favored and in case of doubt, are construed strictly against taxpayers. The claim for tax refund, being in the nature of an exemption from taxation, must, therefore, be construed strictly against petitioner.

As earlier adverted to, the pivotal legal issues which are presented for our consideration in these four (4) cases are (1) whether or not petitioner's sale of gold, copper concentrates and pyrite to the Central Bank (now Bangko Sentral Ng Pilipinas), Philippine Smelting and Refining Corporation (PASAR) and Philippine Phosphate Inc. (Philphos), respectively, during the four quarters of 1988 are subject to the 10% value added tax (VAT) under Section 100 of the Tax Code or should it be considered as effectively zero-rated under paragraph (a)(2) of said Section 100, *ibid.*, and (2) whether or not VAT Ruling Nos. 008-92 and 59-92 are valid and can be applied retroactively. Ancillary to these, are the issues of the validity of the requirement under VAT Ruling No. 008-92 regarding 10% export sales requirement and the disallowances made by respondent on petitioner's claim for VAT refund/credit.

The issues at bar were settled by the Court of Appeals in the recent cases entitled **Manila Mining Corporation vs. Commissioner of Internal Revenue, CA G.R. SP No. 38287, dated June 5, 1997 and Atlas Consolidated Mining and Development Corporation vs. Court of Tax Appeals and Commissioner of Internal Revenue, C.A. - G.R. SP No. 34152, February 6, 1998,** thus in consideration of the same, We rule the pivotal issues in favor of the herein petitioner and the ancillary issues against it. In the aforementioned Atlas case, the Court of Appeals said:

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With regard to the pivotal issues:

x x x

*Executive Order No. 226 falls within the meaning of "special law" as contemplated by Section 100(a)(2) of the Tax Code, as amended by E.O. No. 273. Notwithstanding the absence of actual exportation, sales to PASAR and PHILPHOS – being BOI and EPZA registered and export oriented enterprises – are effectively zero-rated pursuant to Articles 23 and 77 of the Omnibus Investments Code vis-a-vis Section 100(a)(2) of the NIRC.* (Emphasis Ours)

x x x

In equipoise with the Central Bank's policy of conserving gold (*Section 162, CB Circular No. 960*), certain gold producers are required to sell their entire gold production to the Central Bank (Section 171, CB Circular 960). Moreover, no person shall export or bring out, or attempt to export or bring out of the Philippines, gold and/or gold-bearing materials, in any shape, form and quantity without prior approval from the CB Export Department. (*Section 107, CB Circular No. 1318*) Prescinding from the aforesaid policy, gold producers are given incentives, such as considering their sales to the Central Bank as "exports". (Underscoring supplied)

According to settled jurisprudence, circulars of the Central Bank are neither statute nor law, but being issued for the implementation of the law authorizing its issuance, it has the force and effect of law (*People vs. Que Po Lay, 94 Phil. 640*). All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction with it, but conform to the standards that the law prescribes (*United States vs. Tupasi Molina, 29 Phil. 119*). A su converso, should the regulation conflict with the law, the validity of the regulation cannot be sustained (***Director of Forestry v. Muñoz), 23 SCRA 1183, Hijo Plantation, Inc. v. Central Bank, 164 SCRA 194***).

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The Court of Tax Appeals had laid to rest the issue of non-retroactivity of revocations of BIR rulings vis-a-vis Section 246 (formerly Section 338-A) of the Tax Code in Philippine Long Distance and Telephone Company vs. Commissioner of Internal Revenue (C.T.A. Case No. 4056, December 28, 1988). It was ruled therein that:

> "x x x. The doctrine that the government is never estopped from collecting a tax that is legally due it, now stands qualified by Section 338-A (now Section 246) of the National Internal Revenue Code, in the sense that under that section, 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 taxpayers, except in the three instances enumerated therein.
>
> "The ABS-CBN case and the Burroughs case abovecited by petitioner are in point. In both cases, the Supreme Court applied Section 338-A, having found that the prejudice to [the] petitioner therein of the retroactive application of the revocation of the rulings involved, "is beyond question" and "in so far as the enumerated exceptions are concerned, admittedly [the] petitioner does not fall under any of them". Thus, in the ABS-CBN case, the Supreme Court observed, in closing:
>
> "This Court is not unaware of the well entrenched principle that the Government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. In fact, utmost caution should be taken in this regard. But, like other principles of law, this also admits of exemptions in the interest

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> of justice and fair play. The insertion of Section 338-A into the National Internal Revenue Code, as held in the case of Tuason, Jr. vs. Lingad is indicative of legislative intention to support the principle of good faith. In fact, in the United States, from where Section 24(b) was patterned, it has been held that the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result from these, or where there has been a misrepresentation to the taxpayer." (Underscoring for emphasis)

x x x

A comparison of petitioner's original claim for refund/tax credit amounting to ₱40,078,267.81 (page 59 of the CTA Record) and the approved refund/tax credit of ₱2,518,122.32 (pages 63, 69 of the CTA Record) reveals the prejudice wrought by the retroactive application of the revocation. Considered in the context of the deductions totalling ₱30,189,615.43, there is a hiatus in the view of the majority that "petitioner has not sufficiently shown that it will be prejudiced by the retroactive application of VAT Ruling Nos. 008-92 and 059-92" (page 409 of the CTA Record)

In fine, We conclude that the petitioner has sufficiently shown that it would suffer actual and imminent prejudice by the retroactive application of VAT Ruling Nos. 008-92 and 59-92. Accordingly, We rule that the prohibition under Section 246 of the Tax Code applies to the case at bar.

<u>With regard to the ancillary issues:</u>

With respect to the petitioner's argument that the respondent could not impose the 70% export sales requirement on BOI-registered enterprises in order to apply VAT zero-rating, the majority of the members of the Court of Tax Appeals said:

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"x x x VAT Ruling No. 008-92 was issued pursuant to Section 245 of the Tax Code, which empowers the Secretary of Finance to 'promulgate all needful rules and regulations for the effective enforcement of the provisions of [the Tax] Code.' Besides, a finding of this Court against the validity of that portion of the questioned ruling will not in any way benefit petitioner. On the contrary, it may even be prejudicial to it x x x it could adversely affect even the tax credit granted to it in respect of its sales to PASAR and Philphos. Finally, this Court is fully cognizant of the overriding governmental policy which prompted respondent Commissioner to relent from his initial position that the strict rule prescribed in Section 100(a)(1) of the Tax Code admits of no exceptions whatsoever." (pages 16-17 of the CTA Resolutions; pages 409-410 of the CTA Record).

It should be stressed that "it is not the person enjoying tax exemption privilege under special law or international agreement which is given the privilege of enjoying zero-rating under the VAT law, but the sales (by suppliers) to such persons or entities which may be subject to the zero-rate." (BIR Ruling No. 077, March 4, 1988) (Underscoring supplied) Only direct export sales can be zero rated pursuant to Section 100(a)(2). Under Section 2 of Revenue Regulations Nos. 2-88, zero-rating can only be extended to the suppliers of raw materials to BOI-registered export-producer exporting at least 70% of its annual production. (page 360, the National Internal Revenue Code Annotated, de Leon, Fifth Edition (1994).)

Whatever ambiguity there may have been in Rev. Regs. No. 2-88 (page 70 of the CTA Record) has been clarified in Rev. Regs. 7-95, Section 4.100.2 thereof provides that zero-rating applies to:

"The sale of raw materials or packaging materials to an export

> oriented enterprise upon accreditation as such under the provisions of the Export Development Act (Republic Act No. 78-44) and its implementing rules and regulations."
>
> "Any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise upon accreditation as such under the provisions of the Export Development Act (Republic Act No. 78-44) and its implementing rules and regulations."

Further, the following sales by VAT-registered taxpayers are automatically zero-rated:

> "I. With respect to Goods:
>
> "1. The sale and <u>actual shipment</u> of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods and services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; and
>
> 2. Sale of raw materials or packaging materials to non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packaging or repacking in the Philippines of the said buyer's goods and paid for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas." (Rev. Memorandum Circular No. 17-96, Cited in Jose N. Nolledo, Bar Reviewer in Taxation, 1996, page 1095-1096). (Underscoring supplied)

More. The 70% requirement is essential for entitlement to effective zero-rating of

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transactions under Section 100(2)(a)(3) and Section 102(2)(b)(5) by export-oriented enterprises (Rev. Memo Circular No. 17-96). Regulations partake of administrative interpretations of tax laws. They are entitled to great respect from the courts especially if followed for some considerable period (Molina v. Rafferty, 39 Phil. 169; People v. Hernandez, 59 Phil. 272). Administrative agencies are accorded the presumption of regularity in the performance of official functions. This is congruent with the maxim: "*Vocabula artium explicanda sunt secundum definitiones prudentuam" (Technical terms are to be explained by the definition of those learned in the arts.)*

The Court of Tax Appeals, in its majority opinion, brushed aside petitioner's position that the respondent cannot disallow VAT credits by reason of its failure to comply with VAT documentary requirements. We quote with approval the majority opinion:

> "As earlier stated, Section 245 of the Tax Code empowers the Secretary of Finance to issue rules and regulations for the 'effective enforcement' of the provisions of said Code. We cannot subscribe to petitioner's view. That (sic) respondent Commissioner has no discretion to issue rules and regulations that do not strictly comply with the literal text of the law. The rules are promulgated precisely to guide and facilitate, 'effectively rather than delay the processing of claims for tax refund." (page 17 of the CTA Resolution; page 410 of the CTA Records)

x x x

Non-compliance with Sections 108 and 238 of the Tax Code is penalized under Section 111 of the Tax Code (Power of the Commissioner to suspend the business operations of a taxpayer). Corollarily, Section 25 of Rev. Regs. No. 5-87 (Administrative and penal provisions) and Section 263 of the Tax Code (Failure or refusal to issue receipts or sales or commercial

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> invoices, violations related to the printing of such receipts or invoices and other violation) are of the same import. The VAT is imposed on the taxable sales of the seller. Accordingly, the output VAT should be based on the gross selling price appearing in the seller's VAT invoice and not on the sales price appearing in the VAT invoice of the customer. (VAT Ruling No. 076, August 7, 1991) Hence, the seller ought to comply with the invoicing and accounting requirements; otherwise, he shall be penalized for violations thereof. Clearly, the VAT system has a built-in-self-policing feature which will ensure proper collection of the tax at all stages of distribution. Moreover, VAT is an indirect tax. As such, it can be shifted to the purchasers of good and services. To be sure, the shifting of the VAT does not make them directly liable for the payment of the VAT; hence, they cannot invoke the exemption privileges granted to avoid the passed-on-VAT. The VAT shifted forms part of the cost of goods and services purchased.
>
> A consideration of the disallowed input VAT in the light of the foregoing premises is therefore in order:

In summary, the issues at bar has been ruled by the Court of Appeals in the cases of **Manila Mining Corporation vs. Commissioner of Internal Revenue and Atlas Consolidated Mining and Development Corporation vs. Court of Tax Appeals**, *supra*, in the following manner:

> a. VAT Ruling No. 008-92, in imposing 10% VAT on sales of copper concentrates to PASAR, pyrite to PHILPHOS and gold to the Central Bank lacks legal bases, hence, of no effect.
>
> b. VAT Ruling No. 059-92 (dated April 20, 1992) which applies retroactively to January 1, 1988 VAT Ruling No. 008-92 (dated January 23, 1992) is contrary to law.

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c. Refund of input tax for zero-rated sale of goods to Board of Investment (BOI)-registered exporters shall be allowed only upon presentation of documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which have been actually exported (Revenue Regulations No. 2-88).

d. Revenue Regulations that automatically disallow VAT refunds on account of failure to faithfully comply with the documentary requirements enunciated thereunder are valid.

It is to be stressed in the case at bar that the Court of Appeals in the aforementioned case agreed with the petitioner that its sale of gold, copper concentrates and pyrites to the Central Bank, PASAR & PHILPHOS, respectively should not be subject to the 10% VAT-output tax. (Section 104, NIRC), but this does not *ipso facto* mean that it is entitled to the amount of refund sought as it is required by law to present evidence showing the input taxes it paid during the year in question. What is being claimed in the instant petition is the refund of the input taxes paid by the herein petitioner on its purchase of goods and services. Hence, it is necessary for the petitioner to show proof that it had indeed paid the said input taxes during the year 1988. In the case at bar, petitioner failed to discharge this duty. It did not adduce in evidence the sales invoices, receipts or other documents showing the input value added tax on the purchase of goods and services.

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Section 2(c)(1) of Revenue Regulations No. 3-88 specifically enumerates the requirements for the issuance of tax credit certificate or tax refund of input taxes previously paid by a zero-rated taxpayer engaged in sale of goods for export, to quote:

> "(c) Claims for tax credits/refunds. - Application For Tax Credit/Refund of Value Added Tax Paid (BIR Form No. 2552) shall be filled 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 <u>photocopy of the purchase invoice or receipt evidencing the valued added tax paid shall be submitted together with the application.</u> 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. x x x (underscoring supplied)

In the case at bar, petitioner substantially failed to comply with the aforementioned requirements when it opted not to submit the purchase invoices or receipts evidencing the value-added taxes paid.

Aside from the fact that non-compliance by the petitioner with the provision of Section 2 (c)(1) of Revenue Regulations No. 3-88 which is fatal to its claim for tax credit/refund, We also find that the unavailability of the said documentary evidence prevented Us from confirming the veracity of the amount claimed by the petitioner as excess input VAT payments. Mere

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listing of VAT invoices and receipts, even if certified to have been previously examined by an independent certified public accountant, would not suffice to establish the truthfulness and accuracy of the contents thereof unless offered and actually verified by this Court itself. Pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, the invoices, receipts and other documents covering said accounts or payments must be pre-marked by the party concerned and submitted to this Court.

**IN THE LIGHT OF ALL THE FOREGOING,** petitioner's claim for refund or issuance of a tax credit certificate is hereby **GRANTED,** but only up to the amount of ₱13,451,536.15, because this was clearly admitted by the respondent in her Answer in CTA Case No. 4416 and therefore need not be proven. However, the rest of the claims of petitioner as adverted to is **DENIED** due to insufficiency of evidence.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**AMANCIO Q. SAGA**
Associate Judge

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## 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

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