REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ITOGON-SUYOC MINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5030

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JAN 07 1999

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DECISION

This petition for review is seeking for a refund or issuance of tax credit certificate in the total amount of P5,465,204.94, representing excess input value-added tax (VAT, for brevity) for the period February 1, 1992 to January 31, 1993.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the mining business which includes, among others, the exploration, development, operation and production of mining products, and the subsequent sale thereof. It is a VAT registered taxpayer with its latest VAT Registration No. 350-000-162-935-V (Exh. A-1). On February 2, 1988, petitioner filed an Application for Zero Rate of its sales of mine products with the Bureau of Internal Revenue (Exh. B).

For the period February 1, 1992 to January 31, 1993, petitioner seasonably filed its quarterly VAT returns

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reflecting, among others, the zero-rated sales of mine products, the VAT output tax, and the input taxes on domestic purchases of goods/services and on importations of goods, to wit:

Particulars	1st Qtr. (Exh. E)	2nd Qtr. (Exh. F)	3rd Qtr. (Exh. G)	4th Qtr. (Exh. H)
Zero-rated Sales	₱33,329,357.43	₱47,034,840.43	₱34,149,048.59	₱30,550,200.16
VAT Output Tax	₱ 31,196.67	₱ 18,929.97	₱ 92,837.45	₱ 109.33
Less. Input VAT				
1. Carried from previous quarter	₱ 2,013,159.77	₱ 1,255,219.50	₱ 2,594,363.35	₱ 1,412,075.34
2. Domestic purchases of goods/services	1,027,224.43	1,191,583.10	1,279,982.67	1,229,735.91
3. Importation of goods	256,700.00	166,490.72	209,361.00	289,367.00
Total	₱ 3,297,084.20	₱ 2,613,293.32	₱ 4,083,707.02	₱ 2,931,178.25
Excess Input VAT credits	₱ 3,265,887.53	₱ 2,594,363.35	₱ 3,990,869.57	₱ 2,931,068.92
Less: Refund/TCC claimed	2,010,668.03		2,578,794.23	
Excess to be carried forward	₱ 1,255,219.50	₱ 2,594,363.35	₱ 1,412,075.34	₱ 2,931,068.92

Petitioner, believing that it is entitled to the refund of excess input VAT attributable to its zero-rated sales of mine products, pursuant to Section 106 of the 1997 Tax Code, filed on two separate occasions Applications for Tax Credit/Refund of Value-Added Tax Paid as follows:

Inclusive Dates of Input Tax Payments	Date of Filing	Exh.	Amount
November 1, 1991 to July 31, 1992	10-30-92	I	₱2,578,794.23
May 1, 1992 to January 31, 1993	05-26-93	J	2,886,410.71
Total			₱5,465,204.94

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Petitioner waited for more than sixty days for the respondent to act on such applications pursuant to Section 106(e) of the Tax Code. Respondent did not act on these applications, hence, petitioner was compelled to file the instant petition for review on September 14, 1993 in order to preserve its right to judicially claim the refund of excessive input VAT payments.

Respondent, in his Answer, raised the following special and affirmative defenses:

> 5. Local sales of gold to Central Bank are not considered "export sales" for purposes of Section 100(a) of the Tax Code, as amended, hence, subject to the 10% value added tax;
>
> 6. Revenue Memorandum Order No. 22-92, dated May 14, 1992 (a guideline to clarify implementation of Revenue Regulation No. 2-88 and sale of gold to Central Bank) categorically provides that sale of gold to the Central Bank by any person, including mining companies shall be considered local sales for VAT purposes effective January 1, 1988;
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> 7. The opinion of the Secretary of Justice dated April 14, 1992 and the CB Circular No. 1301 dated August 7, 1991, which provides that "all sales of gold to the Central Bank are considered constructive exports" have been set aside by the respondent as exhaustively discussed in its VAT Ruling No. 059-92 date April 28, 1992.
>
> Hence, previous inconsistent rulings are considered superseded because the government is not estopped to collect unpaid taxes on account of errors/mistake of its agents/officials and there should be no vested right arising from an erroneous interpretation of the law (**Hilado vs. Collector of Internal Revenue, 200 Phils. 288**).
>
> 9. Claims for refund of taxes are construed against the claimant, the same being in the nature of an exemption form taxation.

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Hence, in actions for refund, the burden of proof is upon the claimant to establish the right to refund;

10. Petitioner failed to show in its petition that it is entitled to the refund. Mere allegations of refundability does not ipso facto entitle petitioner to refund claimed, thus, petitioner's failure to sustain the burden is fatal to its action for refund;

11. It is incumbent upon the taxpayer to show that it has complied with the provisions of Section 104 and Section 230 of the Code.

To bolster its claim for refund, petitioner formally offered the following documentary evidence:

1. VAT registration certificates (Exhs. A and A-1);

2. Application for zero rate (Exh. B);

3. Central Bank Circular No. 1301, series of 1991 (Exh. C);

4. Opinion of Secretary of Justice dated April 14, 1992 composed of seven (7) pages (Exh. D);

5. Value-Added Tax Returns for the period February 1, 1992 to January 31, 1993 together with the attachments of summary lists of sales, importations, and purchases (Exhs. E to H-5, inclusive);

6. Applications for credit/refund of VAT paid (Exhs. I and J);

7. Certified xerox copies of the certificate of filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission (Exhs. K and K-1); and

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8. CB Circular No. 960, dated October 31, 1995 (Exh. M).

Respondent, on the other hand, elected not to submit controverting evidence but instead submitted his case for decision (see Minutes of the Session, p. 195, CTA records). Both parties submitted their respective memoranda.

The issues to be resolved by this Court are as follows:

1. The validity of VAT Ruling No. 8-92, dated January 23, 1992, which categorizes the sale of gold to Central Bank as local sale subject to 10% rate of VAT; and

2. Petitioner's entitlement to the refund of excess input VAT pursuant to Section 106 of the 1992 Tax Code.

At this juncture it is worthy to mention that this case was originally submitted for decision on September 22, 1995 but was held in abeyance pending resolution of cases involving similar issues by the Court of Appeals or until the appointment of a third member of the Court (see Resolution, dated September 5, 1996, p. 253, CTA records).

Eventually, on February 6, 1998, the Court of Appeals rendered its decision in the case of **Atlas Consolidated Mining & Development Corporation vs. Court** of Tax Appeals and Commissioner of Internal Revenue, CA G.R. SP No. 34152, dated February 6, 1998, which tackled, among others, the validity of VAT Ruling No. 008-92. Hence, it is now proper to decide the case at bar. Pertinent portions of the aforementioned decision read as follows:

> 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) Proceeding from the aforesaid policy, gold producers are given incentives, such as considering their sales to the Central Bank as "exports".
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> According to settled jurisprudence, circulars of the Central Bank are neither statute no 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. Munoz, 23 SCRA 1183, Hijo Plantation, Inc. v. Central Bank, 164 SCRA 194).
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> The Department of Justice, in Opinion No. 47 s. 1992 (dated April 14, 1992) expressed the view that:

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> "xxx With regard to sales of gold to the Central Bank, existing jurisprudence recognizes that Central bank Circulars issued for the implementation of the law authorizing its issuance ... [have] the force and effect of law (People vs. Que Po Lay, 94 Phil. 640), and therefore C.B. Circulars [sic] Nos. 960 and 1301 can be recognized as special laws within the ambit of Section 100(a)(2) of the Tax Code." (Underscoring supplied.) (pages 112-113 of the CTA Record)
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> Based on the foregoing, the conclusion is inevitable that <u>VAT Ruling No. 008-92 (dated January 23, 1992) is *bereft of legal basis* in removing the VAT zero-rating treatment previously recognized on sale of gold to the Central Bank</u>, including constructive export sales to BOI registered enterprises.
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> xxx xxx xxx
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> In sum, this Court hereby resolves the issues jointly stipulated by the parties as follows:
>
> a. <u>*VAT Ruling No. 008-92, in imposing VAT on sales of*</u> copper concentrates to PASAR, pyrite to PHILPHOS and <u>*gold to the Central Bank lacks legal bases, hence of no effect*</u>".
>
> xxx xxx xxx

It is clear from the above decision, that VAT Ruling No. 008-92 lacks legal bases, hence of no effect. Therefore, petitioner's sales of gold to Central Bank is still classified as export sales subject to zero percent rate of VAT pursuant to Section 100(a)(1) of the 1997 Tax Code, to quote:

> **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

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> 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
>
> xxx xxx xxx

Having settled the legal issue involved in the instant case, We now determine if petitioner was able to support with substantial evidence, its claim for refund.

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

> **SECTION 2.** Section 16 of Revenue Regulations 5-87 is hereby amended to read as follows:
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> "SECTION 16. Refunds of tax credits of input tax.
>
> (a) Zero-rated sales of goods and services. - xxx
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> (c) Claims for tax credits/ refunds. - Application For Tax Credit/ Refund of Value Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
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> A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be

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> submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:
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> "1. Export Sales
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> i) Photo copy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.
>
> ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.
>
> "2. Zero-rated sale of services. xxx.

It is also important to note at this point that petitioner's zero rated sales are not only composed of sales of gold to Central Bank but also (real) export sales to London, England.

After a thorough and careful examination of all the documentary evidence presented, this Court finds that petitioner failed to comply with the aforementioned requirements. It did not present in evidence the purchase invoices or receipts evidencing the value added tax paid and the sales invoices which will show the amount of export, and the date and destination of the goods exported. Further, petitioner also failed to submit statements from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

What petitioner submitted in evidence were summary lists of sales, importations and purchases, which although certified to by petitioner's Chief Accountant and Finance Assistant, would not suffice to establish the truthfulness and accuracy of the contents thereof unless the source documents were offered and actually verified by the Court itself. The attestations of petitioner's own employees as to the correctness of the summary lists are at best self-serving, hence, of no consequence.

The failure of petitioner to submit in evidence the documents required under Section 2 of Revenue Regulations No. 3-88 prevented Us from confirming the veracity of the amount claimed by the petitioner as excess input VAT payments. (**Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4601, 4632, 4655 and 4701, November 18, 1997**).

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In fact, We have already denied several claims for refund of input VAT for failure of petitioner to comply with the requirements under Revenue Regulations No. 3-98 (Dow Elanco B.V. Philippine Branch vs. The Commissioner of Internal Revenue, CTA Case No. 5255, January 14, 1998; AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5304, January 20, 1998; Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 5130, 5161 and 5190, February 5, 1998; and Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5306, April 15, 1998), and it is for the same reason that We are denying the instant claim for refund.

WHEREFORE, in view of the foregoing, the petition for review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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