REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NOS. 4968 and 4991

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 24 1998

x - x

DECISION

The cases at bar seek the issuance of tax credit certificates in the amounts of ₱5,683,035.04 (CTA Case No. 4968) and ₱8,173,789.60 (CTA Case No. 4991) or a total amount of ₱13,856,824.64, allegedly representing Petitioner's excess input value added taxes for the four quarters of 1991.

As represented, Petitioner is a mining corporation duly organized and existing under and by virtue of the laws of the Philippines. It is registered with the BIR as a VAT-registered enterprise under VAT Registration Certificate No. 32-6-00632.

Reproduced below are the pertinent facts of each case:

CTA CASE NO. 4968

On April 22, 1991 and July 23, 1991 petitioner filed with respondent its Value

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Added Tax (VAT) Returns for the first and second quarters of 1991.

On March 5, 1993, petitioner filed an application for tax refund/credit of the amount of ₱5,683,035.04 with the VAT Division of the respondent's Bureau, allegedly representing its excess input VAT for the first and second quarters of 1991.

The same was not acted upon by respondent, hence, on March 22, 1993, petitioner filed with this Court the instant petition for review.

CTA CASE NO. 4991

On October 21, 1991 and January 20, 1992 petitioner filed with respondent its Value Added Tax (VAT) Returns for the third and fourth quarters of 1991.

On April 7, 1992, petitioner filed an application for tax refund/credit of the amount of ₱8,173,789.60 with the VAT Division of the respondent's Bureau, allegedly representing its excess input VAT for the third and fourth quarters of 1991.

The same was not acted upon by respondent, hence, on May 24, 1993, petitioner filed with this Court the instant petition for review.

Inasmuch as these two (2) cases involve the same parties and substantially the same factual and legal issues, they are consolidated in this decision.

Petitioner argued that its sales of gold to the Central Bank (now Bangko Sentral ng Pilipinas) are considered export sales, thus the same should be classified as zero rated sales, not subject to any output tax, hence, it is entitled to the refund of the input taxes it paid during the year 1991.

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

CTA CASE NO. 4968

8. The tax in question was collected in accordance with law;

9. In an action for refund, the burden of proof is upon the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action for refund;

10. The claim for refund is still under investigation;

11. The allegations regarding the refundability does not *ipso facto* merit the refund claimed; and

12. Claims for refund of taxes are construed strictly against the claimant, the same being in the nature of an exemption from taxes.

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5. Petitioner has no valid and sufficient cause of action against her;

6. Sales of gold to the Central Bank may not be legally considered export sales for purposes of Section 100(a) of the Tax Code, as amended, and therefore such sales are subject to the 10% value added tax and herein Petitioner is not entitled to any input tax refund pursuant to Section 100(a)(1) in relation to Section 106(a) of the Tax Code, as amended (VAT Ruling No. 059-92, dated April 28, 1992);

7. Moreover, in VAT Ruling No. 202-90, dated October 12, 1990, it was explicitly and clearly held that under the provisions of the Tax Code, as amended, only direct export sales are zero rated and only where the export sales are paid in foreign currency in accordance with the Central Bank rules and regulations;

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8. Claims for refund of taxes are strictly construed against the claimants, the same being in the nature or category of exemptions from taxation and, therefore, in an action for tax refund, the claimant must clearly and indubitably establish his right to such refund;

9. Even in those cases where refund of taxes are proper, and the present petition or controversy is not one among them, it is incumbent upon the claimants or petitioner to show that they have complied with the provisions of Section 204(3) in relation with Section 230 of the Tax Code, as amended; and

10. The tax in question was collected and paid pursuant to and in accordance with law, rules and regulations.

The legal issue which is presented for our consideration in these two (2) cases is whether or not Petitioner's sale of gold to the Central Bank (now Bangko Sentral ng Pilipinas) during the four (4) quarters of 1991 are subject to 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.*

The issue at bar was settled by the Court of Appeals in the cases entitled **Atlas Consolidated Mining and Development Corporation vs. Court of Tax Appeals and Commissioner of Internal Revenue, CA-G.R. SP No. 34152, February 6, 1998; Manila Mining Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 38287, June 5, 1997; and Benguet Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP Nos. 37205, 38958 and 39435,**

July 10, 1998. The Court of Appeals in said cases ruled that the imposition of a 10% VAT on sales of gold to the Central Bank lacks legal bases, hence, of no effect.

Pertinent portions of the Court of Appeals' decision in the aforementioned Atlas case is reproduced hereunder for easy reference, and We quote:

x x x

> In equipose 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, 29 SCRA 1183; Hijo Plantation, Inc. v. Central Bank, 164 SCRA 194)*.

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It is to be stressed in the case at bar that the Court of Appeals in the aforementioned cases agreed with the Petitioner that its sale of gold to the Central Bank should not be subject to the 10% VAT-ouput tax 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 1991. 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.

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 filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or

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> directly with the Commissioner, Attention: VAT Division.
>
> A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. 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 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 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. CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, requires that the photocopies of invoices, receipts and other documents covering said accounts or payments must be pre-marked by the party concerned and submitted to this Court.

We recognize the fact that there are statements made by Petitioner which were deemed admitted by Respondent by virtue of two resolutions promulgated by this Court on February 28, 1994 (CTA Case No. 4968) and on February 22, 1994 (CTA Case No. 4991), however these admissions do not have the effect of supplanting the requirement of submitting to this Court the aforementioned invoices and receipts. It is to be noted that the "admitted" statements speak of presentation of invoices and receipts, schedules of purchases of domestic goods and services, etc., in the administrative level (BIR). Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.

IN THE LIGHT OF ALL THE FOREGOING, Petitioner's claim for refund or issuance of a tax credit certificate is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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WE CONCUR:

(Concurring and Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

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CONCURRING AND DISSENTING OPINION

The majority opinion ruled that petitioner's claim for refund rests on a sound legal basis because the regulations issued by the Bureau of Internal Revenue which impose a 10% VAT on sale of gold to the Central Bank is void and therefore has no legal effect as affirmed by two (2) decisions of the Court of Appeals aptly mentioned in the body of the decision. The majority opinion however denied the claim for refund due to insufficiency of evidence for failure of petitioner to present invoices and receipts evidencing the value-added taxes paid during the period covered by the claim.

I agree with the portion of the decision declaring that the sale of gold to the Central Bank shall not be subject to the 10% VAT but I humbly express my dissent to the eventual denial of the present claim due to insufficiency of evidence.

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In both cases (CTA Case Nos. 4968 and 4991), petitioner filed a "Request for Admissions" setting forth statements that touch upon the veracity of the amount being claimed. For purposes of clarity, I now quote said statements:

CTA CASE NO. 4968

1. On October 10, 1988, Deputy Commissioner Victor A. Deoferio, acting under the authority of the Commissioner of Internal Revenue informed petitioner that:

"... under Sec. 2 of E.O. 581 as amended, gold sold to the Central Bank is considered an export sale which under Sec, 100(a)(1) of the NIRC, as amended by E.O. 273, is subject to zero-rated if such sale is made by a VAT-registered person."

Copy of the BIR Letter-Approval is attached as Annex "A".

2. Petitioner's 1st and 2nd Quarters 1991 VAT Returns were submitted and filed with the BIR-VAT Divisions on April 22, 1991 and July 23, 1991, respectively and subsequently, on March 5, 1993 petitioner filed and submitted its application for tax credit on VAT paid for the 2nd semester of 1990;

Copies of the transmittal-letter dated 31 January 20, 1992, VAT application for tax credit, VAT returns for 3rd and 4th Quarters 1990 are attached as Annexes "B" to "B-2", respectively;

3. That the total VAT claim for refund is ₱5,683,035.04 for 1st and 2nd Quarters of 1991 as reflected in Annexes "B-1" to "B-2";

4. That attached to the transmittal letter of January 20, 1992 (Annex "B") are the following documents:

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a. Copies of invoices and other supporting documents;

b. VAT Registration Certificate;

c. VAT returns for the third and fourth quarters of 1990;

d. Beginning and ending inventories of raw materials, work-in process, finished goods and materials and supplies;

e. Zero-rated sales to Central Bank of the Philippines;

f. Certification that the company will not file any tax credit with the Board of Investments and Bureau of Customs.

which completely documented the petitioner's claim for refund as required;

5. That the original copies of the Official Receipts and Sales Invoices, reflected in Annex "C" (consisting of 24 pages) and Annex C-1 (Summary of Importation, 2 pages) were submitted to BIR-VAT, as required, for domestic purchases of goods and services (1st semester, 1991) for a total net claimable of ₱5,268,401.90; while its VAT input tax paid for importation was ₱679,853.00;

Copy of Annex "C" attached hereto;

6. That petitioner also submitted schedules of (Placer Project) purchases of domestic goods and services and import of summary list of VAT services and goods for quarters ending March 31, 1991 and June 30, 1991 and its supporting official receipts and sales invoices to the BIR-VAT on March 5, 1993 and paid output tax of ₱265,219.86 (as shown by the summary of payment);

Copies of the schedules are attached as Annexes "D", "D-1", "D-2"; "E", "E-1";

7. That as established by the schedules (Annexes "D" to "F" and their sub-markings); and original receipts/sales invoices the total input VAT for 2nd semester 1990 paid by petitioner was ₱5,948,254.91 less the output

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payment of ₱265,219.86 for a net VAT claim of ₱5,683,035.04;

8. That the petitioner submitted the official receipts/sales invoices subject to output tax sales for 1st and 2nd quarters 1991 to the BIR-VAT on March 5, 1993 in the sum of ₱265,219.86;

Copies of the zero-rated sale of goods from January 1 to June 30, 1991 submitted to the BIR is herein attached as Annex "G";

9. That the total gold sales made by petitioner to Central Bank from January 1, 1991 to June 30, 1991 was for a total sum of ₱70,854,000.00;

Copies of summary of sales to CB and affidavit of total sales are herein attached as Annex "H";

10. Petitioner on March 5, 1993 submitted to the BIR-VAT Division its Summary List of Schedules VAT Credit Claim (1st Semester 1991) showing a net VAT claim of ₱5,683,035.04;

A copy of the summary is attached as Annex "I";

11. That on March 5, 1993, petitioner submitted its affidavit and the BOI and BOC's certifications that it has not filed any tax credit with the BOI and Bureau of Customs;

Copies of the affidavit and certifications are attached as Annexes "J" to "J-2";

12. That the respondent has not approved nor denied petitioner's claim for VAT refund for the 2nd semester, 1990;

<u>CTA CASE NO. 4991</u>

1. On October 10, 1988, Deputy Commissioner Victor A. Deoferio, acting under the authority of the Commissioner of Internal Revenue informed petitioner that:

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"... under Sec. 2 of E.O. 581 as amended, gold sold to the Central Bank is considered an export sale which under Sec, 100(a)(1) of the NIRC, as amended by E.O. 273, is subject to zero-rated if such sale is made by a VAT-registered person."

Copy of the BIR Letter-Approval is attached as Annex "A".

2. Petitioner's 3rd and 4th Quarters 1991 VAT Returns were submitted and filed with the BIR-VAT Divisions on October 21, 1991 and January 20, 1991, respectively and subsequently, on April 7, 1993 petitioner filed and submitted its application for tax credit on VAT paid for the 2nd semester of 1990;

Copies of the transmittal-letter dated March 31, 1992, VAT application for tax credit, VAT returns for 3rd and 4th Quarters 1990 are attached as Annexes "B" to "B-2", respectively;

3. That the total VAT claim for refund is ₱8,173,789.60 for 3rd and 4th Quarters of 1991 as reflected in Annexes "B-1" to "B-2";

4. That attached to the transmittal letter of March 31, 1992 (Annex "B") are the following documents:

a. Copies of invoices and other supporting documents;

b. VAT Registration Certificate;

c. VAT returns for the third and fourth quarters of 1990;

d. Beginning and ending inventories of raw materials, work-in process, finished goods and materials and supplies;

e. Zero-rated sales to Central Bank of the Philippines;

f. Certification that the company will not file any tax credit with the Board of Investments and Bureau of Customs.

which completely documented the petitioner's claim for refund as required;

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5. That the original copies of the Official Receipts and Sales Invoices, reflected in Annex "C" (consisting of 35 pages) and Annex C-1 (Summary of Importation, 2 pages) were submitted to BIR-VAT, as required, to show domestic purchases of goods and services (2nd semester, 1991) which established that the total net claimable of ₱7,953,816.38; while its VAT input tax paid for importation was ₱563,503.00;

Copy of Annex "C" attached hereto;

6. That petitioner also submitted schedules of (Placer Project) purchases of domestic foods and services and import of summary list of VAT services and goods for quarters ending March 31, 1991 and June 30, 1991 and its supporting official receipts and sales invoices to the BIR-VAT on April 7, 1993 and to show that it paid output tax of ₱343,529.78 (as shown by the summary of payment);

Copies of the schedules are attached as Annexes "D", "D-1", "D-2"; "E", "E-1";

7. That as established by the schedules (Annexes "C" to "E" and their sub-markings); and original receipts/sales invoices the total input VAT for 2nd semester 1990 paid by petitioner was ₱8,173,789.78 less the output payment of ₱343,529.78 for a net VAT claim of ₱8,173,789.60;

8. That the petitioner submitted the official receipts/sales invoices subject to output tax sales for 3rd and 4th quarters 1991 to the BIR-VAT on April 7, 1993 in the sum of ₱343,529.78;

Copies of the zero-rated sale of goods from July 1 to December 31, 1991 submitted to the BIR is herein attached as Annex "F";

9. That from July 1, 1991 to December 31, 1991 the total gold sales by petitioner to the Central was in the sum of ₱125,936,837.00;

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Copies of summary of sales to CB and affidavit of total sales are herein attached as Annex "H";

10. Petitioner on April 7, 1993 submitted to the BIR-VAT Division its Summary List of Schedules VAT Credit Claim (2nd Semester 1991) showing a net VAT claim of ₱8,173,789.60;

A copy of the summary is attached as Annex "I";

11. That on April 7, 1993, petitioner submitted its affidavit and the BOI and BOC's certifications that it has not filed any tax credit with the BOI and Bureau of Customs;

Copies of the affidavit and certifications are attached as Annexes "J" to "J-2";

12. That the respondent has not approved nor denied petitioner's claim for VAT refund for the 2nd semester, 1991;

13. That petitioner is a VAT Registered Enterprise with VAT Registration Certificate No. 32-6-000632, copy of which is attached as Annex "G".

In this Court's resolution, dated February 28, 1994 in CTA Case No. 4968, this Court ruled that the aforequoted statements were deemed admitted by respondent. On February 22, 1994, this Court promulgated a resolution in CTA Case No. 4991 were We also considered the aforequoted statements admitted by respondent with the exceptions of the contents of the documents marked as Annexes "B","B-2","B-3","C","C-1","D","D-1" and "D-2","E","E-1","F","H","I", "J" and "J-2" which were all attached to the Request for Admissions filed by petitioner. However, these exceptions were rendered inconsequential as these same documents were eventually offered as evidence by the petitioner on May 26, 1995 and were subsequently admitted by this Court in a resolution dated July 18, 1995. The statements deemed to have been admitted by respondent fall under the category of judicial admissions as defined by Section 2 of Rule 129 of the Rules of Court:

> **Sec. 2.** ***Judicial admissions.*** — Admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake.

It is already well-settled that an admission made by a party in the course of the proceeding does not require proof and that said admissions may be contradicted only by a showing that it was made through palpable mistake **(Philippine Banking Communications vs. Court of Appeals, 195 SCRA 567).** As mentioned earlier, the statements that were deemed admitted by respondent prove the fact of payment of value-added taxes in the amount claimed in the petition, hence petitioner need not adduce any evidence pertaining to this matter, otherwise it will render nugatory the aforequoted rule on admissions.

It would be unjust for us to deny the claim based on an erroneous appreciation of the admitted statements because petitioner obviously relied on this particular

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rule and consequently saw no need to submit additional proof. I believe that the evidence offered by the petitioner is sufficient to warrant the grant of the refund.

I hereby register my strong dissent to the majority opinion and vote to grant the entire claim for refund in the amount of P13,856,824.64 in favor of petitioner.

ERNESTO D. ACOSTA
Presiding Judge

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