REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5296

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 16 2004

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DECISION

This is a case remanded to us by the Court of Appeals which involves a claim for refund or issuance of a tax credit certificate in the amount of **SEVEN MILLION SEVENTY SIX THOUSAND FIVE HUNDRED TWENTY AND 27/100 PESOS (P7,076,520.27)** allegedly representing excess/unutilized input value-added tax paid for the third quarter (July to September) of the taxable year 1993.

A brief recapitulation of the facts of the case is as follows:

Petitioner is a corporation duly organized and existing by virtue of the laws of the Philippines primarily engaged in the business of mining, milling and marketing of mineral products such as copper, gold and its by-products. It registered itself with the Bureau of Internal Revenue as a Value-Added Tax (VAT) taxpayer and was issued VAT Registration No. 32-0-004622 *(Exhibit J)*. Likewise, petitioner, being an exporter of copper concentrates, applied for VAT zero-rating on all its sales, which application was duly approved by the Bureau of Internal Revenue *(Exhibit C)*.

For the third quarter (July to September) of the taxable year 1993, petitioner filed its Value-Added Tax Return and duly paid its taxes thereon *(Exhibits D, E & F)*, which allegedly covered its export sales of copper concentrates and gold productions to Mitsubishi Materials Corporation of Japan, Marc Rich and Company and Centrotrade Minerals and Metals based in Switzerland.

On October 6, 1995, petitioner, being a zero-rated VAT entity, filed for a claim for refund or the issuance of a tax credit certificate with the Bureau of Internal Revenue for its value-added tax payments

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made covering the third quarter of 1993 in the amount of P7,076,520.27 *(Exhibit G)*. On October 20, 1995, without receiving any reply from the Bureau, herein petitioner elevated its case before this court through a Petition for Review. For failure of the respondent to file his Answer within the period prescribed by law, he was declared *in default* by this court in a Resolution promulgated on March 19, 1996, thus, this case was tried *ex-parte*.

On October 2, 1997, a Decision denying petitioner's claim due to prescription was promulgated by this court. The dispositive portion of the said Decision is quoted below for easy reference:

> WHEREFORE, premises considered, finding the petition unmeritorious for being filed beyond the two year reglementary period prescribed under Section 106 (b) of the NIRC, the same is hereby DISMISSED. Accordingly, the claim for refund filed by the petitioner for input taxes paid during the third quarter of 1993 is DENIED.
>
> SO ORDERED.

As a result of the denial, on October 23, 1997, a Motion for Reconsideration was filed by petitioner. In a Resolution promulgated on July 20, 1998, this court reconsidered in part its decision with regard to the issue on prescription which was accordingly reversed to admit herein petitioner's arguments. But petitioner's claim for refund or issuance of a tax credit certificate was still denied on the ground that petitioner failed to submit photocopies of export documents, invoices or receipts evidencing the sale of goods, as well as the names of the persons to whom the goods were delivered. For a better assessment, the specific paragraphs in the said Decision are quoted below:

> Upon a careful review of the evidence presented this Court finds that although the claim was not barred by prescription, nevertheless, the same cannot be granted due to insufficiency of evidence. Petitioner failed to submit export documents necessary to prove the export sales. As we have already held in a similar case entitled Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5205, October 13, 1997, thus:
>
> > "Under Section 245 of the Tax Code, the Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code." In the case of Eslao vs. Commissioner on Audit, G.R. No. 108310, September 1, 1994, 234 SCRA 161, these administrative regulations and policies enacted by administrative

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bodies to interpret the law have the force of law and are entitled to great respect." One of these rules and regulations is Revenue Regulation No. 3-88 issued to implement the VAT law, and which lists down the documents to be attached in refunds or tax credits of input taxes in export sales.

> "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. In addition, the following documents shall be attached whenever applicable:
>
> "1. Export Sales
>
> "i) Photocopy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sales, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of the 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 xxx xxx
>
> Under subparagraph 1 (ii) x x x, the statement shall show the amount in foreign currency of the export proceeds or consideration and the date of inward remittance, conversion rate into Philippine currency and the total peso value thereof."
>
> It is to be observed that the word "shall" was used by the aforequoted regulations, which implies that the requirements laid down by these regulations are mandatory, failing in any of which would prove fatal to one's case.
>
> xxx xxx xxx

After examining the evidence presented by herein petitioner, this Court noted that petitioner failed to submit photocopies of export

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> documents, invoices or receipts evidencing the sale of goods, as well as the names of the persons to whom the goods were delivered. Consequently, for failure to submit these vital documents, the Court could not ascertain the veracity of the contents indicated in petitioner's VAT return as export sales. (see also Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4831, 4859 and 4944, October 30, 1997)
>
> WHEREFORE, in view of the foregoing, the instant motion for reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED.

On August 24, 1998, a Petition for Review was filed, through mail, by herein petitioner with the Court of Appeals. On November 28, 2000, the Honorable Court of Appeals rendered a Decision which had become final on December 28, 2000, remanding the said case to this court for further proceedings, with the following dispositive portion:

> WHEREFORE, the petition is hereby GRANTED in part. The CTA is ordered to conduct further proceedings in CTA Case No. 5296 with dispatch to enable petitioner Atlas to present in evidence the necessary export documents required by Revenue Regulations No. 3-88.
>
> SO ORDERED.

After several hearings, petitioner filed a Supplemental Offer of Evidence on June 25, 2002. Subsequently, on December 5, 2002, petitioner filed a Motion for Leave of Court to Re-Open the Case and Allow the Presentation of Additional Evidence, attaching to said motion various photocopies of export invoices, which petitioner failed to present before its offer of supplemental evidence. Thereafter, this case was deemed submitted for decision on March 24, 2004 sans respondent's memorandum.

The issue to be resolved in this case is whether or not petitioner has substantiated its claim for refund of input VAT paid during the third quarter of the taxable year 1993 in the amount of P7,076,520.27 through the presentation of the necessary export invoices, receipts or sales invoices evidencing sale of goods.

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Petitioner submitted and offered in evidence the Report of the Independent Certified Public Accountant, Ms. Lorna Tomampo, together with copies of the bills of lading, export declarations, and certificates of origin which were utilized by the said Independent CPA in support of her report, to properly substantiate its claim. However, after a close scrutiny, this court noticed that no invoice or receipt evidencing the sale of goods, as well as the name of the person to whom the goods were delivered, were offered in evidence by herein petitioner. It is observed that when petitioner filed its Motion for Leave of Court to Re-open the Case and Allow the Presentation of Additional Evidence, it was aware that it had been remiss in presenting the crucial export documents as ordered by the Court of Appeals. Likewise, petitioner admitted that it had realized the fatal omission only after the submission of its Supplemental Formal Offer of Evidence *(CTA Records, page 175)*. These export invoices, marked as Annexes "A" to "V" were attached to the said motion. However, these very same documents, though photocopies were attached to petitioner's motion, were not formally offered during the trial. As a result, these documents do not have any probative value in this case. It bears emphasis that this court has time and again ruled that, pursuant to Section 34 of Rule 132 of the Revised Rules of Court, evidence not formally offered is of no value and cannot be considered by the courts *(PBC Capital Investment Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6068, May 23, 2002)*. The relevant provision is hereunder quoted, to wit:

RULE 132

> **Section 34. Offer of Evidence**. – The Court shall consider no evidence which has not been offered. The purpose for which the evidence is offered must be specified.

It is evidently clear that the very reason why this case was remanded back to this court was to grant another opportunity to herein petitioner to present additional and necessary export documents as required under Revenue Regulations No. 3-88. The said revenue regulation is quoted below for easy reference:

<u>REVENUE REGULATIONS NO. 3-88</u>

> **Section 2.** Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:

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Section 16. Refunds or Tax Credit of Input Tax. –

xxx xxx xxx

(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.

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. In addition, the following documents shall be attached whenever applicable:

1. Export Sales

i) Photocopy of export documents showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sales, the photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of the 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. (Emphasis supplied)

With petitioner's failure to present the most crucial document required in this case, as no export document required under Section 2 of Revenue Regulations No. 3-88 was ever offered in evidence, this court is left with no other decision but to deny petitioner's claim.

Moreso, even if this court assumes, for the sake of argument, that the said documents were offered in evidence by herein petitioner, it is noteworthy to emphasize that the same documents have likewise failed to comply with the invoicing requirements mandated by the law and revenue regulations.

For one, some of the invoices supporting petitioner's sale of copper and pyrite do not show petitioner's VAT Registration Number, which is clearly in contravention with Section 2 of Revenue Regulations No. 6-89, in relation to Section 108 of the National Internal Revenue Code. Both sections are reproduced below for easy reference:

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REVENUE REGULATIONS NO. 6-89

Section 2. Section 21 (a) of Revenue Regulations No. 5-87 is hereby amended to read as follows:

"**Section 21. Invoicing Requirements. Invoices and/or receipts.** – All VAT-registered persons shall, for every sale of goods or services issue an invoice or receipt which must show:

(1) the VAT registration number of seller;
(2) the name, business style, if any, and address of the purchaser, customer or client;
(3) date of transactions;
(4) quantity, unit cost and description of merchandise or nature or service;
(5) if the seller bills the tax as a separate item in the invoice, the amount of gross selling price or gross receipts on which the value-added tax is based. The amount of the value-added tax is determined by multiplying the amount of gross selling price or gross receipts by the rate of tax and the sum of the gross selling price or gross receipts and the value-added tax which the purchaser pays or is obligated to pay to the vendor;

Section 108. Invoicing and accounting requirements for VAT-registered persons. - *(a) Invoicing requirements.* – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 238, the following information shall be indicated in the invoice or receipt:

(1) The VAT registration number
(2) If the seller bills the tax as a separate item in the invoice:
   a. The amount of gross selling price or gross receipts on which the value-added tax is based;
   b. The amount of value-added tax determined by multiplying the amount of gross selling price or gross receipts by the rate of tax; and
   c. The sum of (i) the gross selling price or gross receipts and (ii) the value-added tax which the purchaser is obligated to pay to the seller.
(3) If the seller elects not to bill the tax as a separate item in the invoice or receipt the total amount charged against the buyer.
(Emphasis supplied.)

Furthermore, a number of petitioner's invoices do not bear the printer's authority to print number nor do some of the invoices, which were printed in 1990 but issued for sales made in 1993, show the new Taxpayer's Identification Number (TIN), which are obviously in violation of Section 239[now Section

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238] as implemented by Section 19(c)(3) of Revenue Regulations No. 2-78, as amended, and Section 108 as implemented by Section 5(5.3)(5.3a) of Revenue Regulations No. 63-91, respectively, *viz*:

SEC. 239. Printing of receipts or sales or commercial invoices. -

All persons who print receipts or sales or commercial invoices shall, for every job order, secure from the Bureau of Internal Revenue an authority to print said receipts or invoices before printing the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, taxpayer account number and business address of the person or entity to use the same.

REVENUE REGULATIONS NO. 2-78

Section 19. Authentication and registration of book, register, or records, authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and invoices.

xxx xxx xxx

C. Authority to print receipts, sales or commercial invoice. – Before xxx

3. Other requirements. –

1. Every copy of invoice or receipt approved for printing under these regulations shall bear on the original and every copy thereof on its lower left hand corner the name, business address and **authority number of the printer.**

(Emphasis supplied.)

REVENUE REGULATIONS NO. 63-91

Section 5. Use of New TIN

5.1 x x x

5.2 The new TIN shall replace the existing TANs, VAT registration numbers, non-VAT registration number and withholding tax agent identification numbers. Therefore, only the TIN shall be reflected on all documents, papers and/or records that previously required the indication/reflection of any of the aforementioned numbers.

5.3 On Invoices/Receipts.

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5.3.a The new TIN shall be reflected/super-imposed on all unexpended/unissued VAT/non-VAT receipts/invoices.

5.3.b All receipts/invoices to be printed subsequently shall contain the TIN, with the letter(s) "V" (for VAT registered) or "NV" (for non-VAT registered) placed after the last digit of the TIN. This shall facilitate the determination of whether the taxpayer is VAT registered or not.

(Underlining supplied.)

Though petitioner presented various documents, still, some of its sales of pyrite are not properly supported by export documents. The sales of gold in the amount of P68,301,265.60 were likewise not supported by documents. A summary of the export sales and documents presented is attached in support of this court's decision *(Annex "A")*.

Considering that petitioner has already been given another chance to present the necessary export documents to prove its claim, its laxity and negligence so as to fall short of its responsibility to produce the very documents required, is clearly intolerable.

WHEREFORE, the instant Petition for Review is hereby **DENIED.**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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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 Justice

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ATLAS CONSOLIDATED MINING DEVELOPMENT CORPORATION
SUMMARY LIST OF EXPORT SALES
July 1, 1993 to September 30, 1993

ANNEX A

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Date	Invoice No.	Exhibit	Bill of Bading/Airway Bills	Exhibit	Export Declarations/Certificate of Origin	Exhibits	Amount	Remarks
COPPER								
7/7/1993	11390	Annex A	SO-002/93	R	93007008/93-838	R-1, R-2	74,650,332.09	Final Invoice/No TIN-V & BIR Permit to Print
7/26/1993	11394	Annex B	ST-ON-1	R-3	93008100/93-868	R-4, R-5	69,623,329.80	Final Invoice/No BIR Permit to Print
8/18/1993	11398	Annex E		R-6	93008537/93-904	R-7, R-8	71,582,802.74	Final Invoice/No BIR Permit to Print
8/24/1993	11399	Annex F	SO-003/93	R-9	93009457/93-924	R-10, R-11	81,133,999.45	Final Invoice/No BIR Permit to Print
9/11/1993	11407	Annex G	SN-01	R-12	93010055.93-938	R-13, R-14	78,612,880.21	Final Invoice/No BIR Permit to Print
9/20/1993	11413	Annex H	ST-ON-01	R-15	9304075/93-478	R-16, R-17	82,571,607.05	Provisional Invoice/TAN-VAT
Adjustments								
1/5/1993	11363	Annex C					(1,809,286.17)	Provisional Invoice/TAN-VAT
2/7/1993	11371	Annex D	ST-NC-1	R-18	92010980/93-271	R-19, R-20	(2,378,198.74)	Final Invoice/No TIN-V & BIR Permit to Print
							453,987,466.43	
PYRITE								
7/18/1993							14,354.55	
7/16/1993	11392	Annex I	SO-01	R-21	93007914	R-22	6,485,842.69	Invoice/TAN-VAT
7/19/1993	11391	Annex J	-	-	-	-	1,940,207.86	Invoice/TAN-VAT/No export declaration, bills of lading
7/19/1993	11393	Annex K	-	-	-	-	3,194,411.41	Invoice/TAN-VAT/No export declaration, bills of lading
7/29/1993	11396	Annex L	-	-	-	-	3,058,971.74	Invoice/TAN-VAT/No export declaration, bills of lading
8/6/1993	11397	Annex M	-	-	-	-	2,780,358.63	Invoice/TAN-VAT/No export declaration, bills of lading
8/20/1993	11400	Annex N	-	-	-	-	5,777,081.29	Invoice/TAN-VAT/No export declaration, bills of lading
8/23/1993	11402	Annex O	-	-	-	-	1,894,164.82	Invoice/TAN-VAT/No export declaration, bills of lading
8/27/1993	11403	Annex P	-	-	-	-	3,133,292.57	Invoice/TAN-VAT/No export declaration, bills of lading
8/28/1993	11404	Annex Q	-	-	-	-	1,948,247.71	Invoice/TAN-VAT/No export declaration, bills of lading
9/13/1993	11405	Annex R	-	-	-	-	1,985,381.50	Revised Invoice/No TIN-V & BIR Permit to Print
9/19/1993	11408	Annex S	-	-	-	-	2,841,493.02	Invoice/TAN-VAT/No export declaration, bills of lading
9/16/1993	11409	Annex T	-	-	-	-	2,991,170.74	Invoice/TAN-VAT/No export declaration, bills of lading
9/21/1993	11412	Annex U	-	-	-	-	2,878,608.02	Invoice/TAN-VAT/No export declaration, bills of lading
9/25/1993	11406	Annex V	-	-	-	-	2,409,405.75	Revised Provisional Invoice/No TIN-V & BIR Permit to Print
Adjustments								
7/15/1993			-	-	-	-	(7,325.60)	No supporting documents
8/31/1993			-	-	-	-	(98,382.77)	No supporting documents
							43,227,283.93	
GOLD								
7/17/1993							9,607,829.22	No supporting documents
7/26/1993							10,101,764.45	No supporting documents
8/18/1993							10,472,050.11	No supporting documents

ATLAS CONSOLIDATED MINING DEVELOPMENT CORPORATION
SUMMARY LIST OF EXPORT SALES
July 1, 1993 to September 30, 1993

ANNEX A

8/24/1993							11,652,959.28	No supporting documents
9/11/1993							13,965,358.12	No supporting documents
9/30/1993							12,872,575.14	No supporting documents
Adjustments								
1/5/1993							(601,130.69)	No supporting documents
2/7/1993							229,859.97	No supporting documents
							68,301,265.60	
TOTAL EXPORT SALES PER PETITIONER'S SUMMARY LIST							**565,516,015.96**	