REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4775

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 25 1998

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DECISION

This case involves a claim for refund/tax credit in the total amount of ₱2,329,950.35 representing VAT input taxes allegedly paid by the petitioner for the period January to June of 1990.

Petitioner is a domestic corporation engaged in the business of mining, production and sale of mineral products. It is a Value-Added Tax (VAT) registered enterprise with VAT Registration Certificate No. 32-6-000632 (Exh. A).

On April 8, 1988, petitioner filed an application for zero-rating of its gold sold to the Central Bank. Said application obtained a favorable response from the Bureau of Internal Revenue (BIR) in a letter, dated October 10, 1988, which was signed by the then Deputy Commissioner, Victor A. Deoferio, Jr. (Exh. B).

Petitioner, on April 20, 1990, filed its VAT return for the first quarter of 1990 (January-March) which showed zero-rated sales in the sum of ₱16,681,133.98 and net refundable/creditable input VAT of ₱736,722.57 (Exh. C).

Subsequently, on July 20, 1990, petitioner filed its VAT return for the second quarter of 1990 (April-June) which reflected zero-rated sales in the amount of ₱22,280,733.27 and net refundable/creditable input tax of ₱1,629,985.64 (Exh. D).

An application for tax credit/refund of VAT paid was correspondingly filed by the petitioner on March 17, 1992 covering the period January 1 to June 30, 1990 in the total amount of ₱2,329,950.35 (Exh. E).

There is no doubt that the case was still pending administrative investigation (considering that the claim with the Bureau had just been filed) when the instant Petition for Review was filed on March 31, 1992.

Petitioner postulates that its sales of gold to the Central Bank are considered export sales which under Section 100 of the Tax Code are zero-rated and refundable under Section 106(b) of the same Code. Sections 100 and 106(b) are quoted, as follows:

> "**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

242

> 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 of VAT-registered persons shall be subject to 0%:
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> (1) Export sales; and
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> (2) x x x
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> "**SEC. 106.** ***Refunds or tax credits of input tax.*** - (a) x x x
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> (b) *Zero-rated or effectively zero-rated sales.* - Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax."

Corollary thereto, petitioner also relied on Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, which provides:

> "**SEC. 16.** ***Refunds of tax credits of input tax.*** - (a) *Zero-rated sales of goods and services.* - Only a VAT-registered person may be given a tax credit or refund of value-added taxes paid corresponding to the zero-rated sales of goods or services, to the extent that such taxes have not been applied against output taxes, upon showing of proof of compliance with the conditions stated in Section 8 of these Regulations."

Respondent, on the other hand, argues that sales of gold to the Central Bank does not fall under the category of sale which can be classified as zero-rated.

The primordial issue to be resolved in this case is whether or not sales of gold to the Central Bank by the petitioner for the first and second quarters of 1990 are considered zero-rated thus entitling petitioner to a refund or tax credit for the same period.

The subject controversy is not new. The Court of Appeals in the case of **Manila Mining Corporation v. Commissioner of Internal Revenue, CA-G.R. SP No. 38287, June 5, 1997,** (with Entry of Judgment, dated October 2, 1997) already ruled that:

> "Revenue Memorandum Circular No. 59-88, dated December 14, 1988, and BIR Ruling No. 036-90 dated February 14, 1990 considered sales of gold by a VAT registered firm to the Central Bank as export sale subject to zero rate pursuant to E.O. 581 and Section 169 of CB Circular No. 960."

As adverted to earlier, the BIR granted petitioner's application for zero-rating. This by itself, is an act of recognition that indeed petitioner's sales of gold to the Central Bank are zero-rated. The BIR also issued VAT Ruling No. 100-000-000-378-88, dated August 23, 1988, which declares that "The sale of gold to the Central Bank is considered as an export sale subject to zero-rate pursuant to Sec. 100 of the Tax Code, as amended by E.O. No. 273". In the recently decided case of **Benguet Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP Nos. 37205, 38958 and 39435, dated July 10, 1998,** the

244

Court of Appeals reiterated the ruling enunciated in the aforecited Manila Mining case in this manner:

> Previous to the issuance of VAT Ruling No. 008-92 on 23 January 1992, sales of gold to the CB were deemed export sales subject to a 0% rate of VAT. However, upon the issuance of VAT Ruling 008-92, said sales of gold to the CB were deemed local sales and imposed a 10% VAT rate. What caused injury and damage to petitioner is the issuance of VAT Ruling No. 59-92 providing for a retroactive application of VAT Ruling No. 008-92 to the year 1998. The imposition of a higher VAT rate on petitioner's sales of gold to the CB (10% VAT rate instead of 0%) in effect reduced petitioner's income. This must be so because when petitioner's claims for tax credits were denied citing VAT Ruling No. 008-92 and VAT Ruling No. 59-92, petitioner suffered financial damage equivalent to the sum of the disapproved claims. Had petitioner known that such sales were deemed local sales and subject to the 10% VAT rate (which rate was not the prevailing rate in 1988) it would have (as it was within its rights to do so) passed on the cost of the input taxes (representing actual payments, costs or expenses in the purchase of goods and services) to the CB. Petitioner did not do that since it relied on the VAT rulings then in effect that the transactions in question were deemed export sales and subject to the 0% VAT rate. The reduction in income is the injury and damage to petitioner which is well within the meaning of the provision herein cited.
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> Pertinently, it may be observed that the amendment of the VAT Law entitled "The New Expanded VAT Law" (Republic Act No. 7716) is revealing. Section 2 thereof amends Section 100 of the NIRC. The amended version of Section 100 of the NIRC, specifically Section 100(a)(2)(A)(iv), expressly provides that "Sale of gold to the Bangko Sentral ng Pilipinas (BSP)" is an export sale subject to the 0% VAT rate.

Having settled the issue that sales of gold to the Central Bank by the petitioner for the first and second quarters of 1990 are zero-rated, we now tackle the question of whether or not petitioner has proven its entitlement to the refund or tax credit.

In compliance with CTA Circular No. 1-95, petitioner submitted certifications by an independent Certified Public Accountant together with the summaries of VAT payments, the pre-marked invoices and official receipts covering the period January to June, 1990. A witness, Miss Irene Vallestero, the Senior Audit Manager of Joaquin Cunanan and Co., was presented to identify said certifications and documents. She also testified as to the procedure adopted by her firm in coming up with the required certifications. The petitioner also submitted as part of its evidence, a certification issued by the Mint and Gold Refinery Department of the Bangko Sentral ng Pilipinas, dated January 28, 1994, that the Bangko Sentral bought from the petitioner its gold production in 1990. Another witness, Mr. Danilo Bautista, was also called to testify and identify some documents which were submitted by the petitioner in the course of the trial.

Respondent, for her part, did not present any witness but she did offer as evidence several letters from Revenue District Nos. 47, 48, 49 and 50, which summarily stated that their records do not show that the

246

request for refund of petitioner for the period involved in this case was ever received. Respondent filed her memorandum on February 26, 1996. The case was submitted for decision sans the memorandum of petitioner.

After an exhaustive review of all the facts of the case, argumentation of the parties, laws and jurisprudence pertinent to the case at bar, this Court finds that the petitioner has successfully proven its payments of input taxes and its entitlement to the refund/credit sought.

WHEREFORE, in view of all the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE** A TAX CREDIT CERTIFICATE in favor of the petitioner in the total amount of ₱2,329,950.35 representing input taxes paid for the period January to June 30, 1990.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

247

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