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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5752

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 18 2001

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P40,980,909.67, representing unutilized input value-added tax (VAT, for brevity) on importation of goods and domestic purchases of goods and services for the taxable calendar quarters ended March 31, 1997 and June 30, 1997.

The following facts are undisputed.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at One Corporate Plaza, 845 Arnaiz Avenue, 1223 Makati City. It is primarily engaged in the mining business, which includes the exploration, development and operation of mining properties for purposes of commercial production and in marketing mine products. As an exporter and seller of goods, Petitioner is registered with the Bureau of Internal Revenue under Certificate of Registration No. 94-410-002700, dated June 30, 1994 and was originally issued a VAT

Registration Certificate No. 31-9-00027, dated January 1, 1988 (Annex A, CTA records, p. 6).

On May 4, 1988, Petitioner was able to secure an approved Application for Zero Rate on its sale of mine products pursuant to Section 100(2)(A) of the Tax Code, as amended (Annex B, CTA records, pp. 7 and 8).

On April 21, 1997, Petitioner filed its 1997 first Quarterly Value-Added Tax Return with the Bureau of Internal Revenue reflecting, among others, a total net creditable input tax in the amount of P23,581,103.82 (Annex C, CTA records, p. 9).

On July 21, 1997, Petitioner filed its 1997 second Quarterly Value-Added Tax Return with the Bureau of Internal Revenue reflecting, among others, a total net creditable input tax in the amount of P17,451,727.39 (Annex D, CTA records, p. 10).

On December 28, 1998 and March 5, 1999, Petitioner filed with the Central Records Management Division of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance applications for Tax Credit/Refund of Value-Added Tax Paid for the periods January 1, 1997 to March 31, 1997 and April 1, 1997 to June 30, 1997, in the amounts of P23,581,061.76 and P17,399,847.91 respectively (Annexes E and F, CTA records, pp. 11 to 16).

On March 26, 1999, Petitioner lodged its appeal with this Court in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

In his Answer, Respondent raised the following Special and Affirmative defenses:

> 5. The petition states no cause of action as it does not alleged (*sic*) the dates when the taxes sought to be refunded were actually paid

(*Manufacturer's Bank & Trust Co., etc. vs. Commissioner of Internal Revenue, CTA Case No. 1953, November 29, 1965*);

6. Pursuant to Section 112(D) of the NIRC, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within 120 days from the date of submission of complete documents in support of the application filed and not 60 days as alleged by the petitioner;

7. It is incumbent upon herein petitioner to show that it has complied with the provision of Section 229 of the National Internal Revenue Code;

8. Claims for tax refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35*);

9. One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. (*Asiatic Petroleum vs. Llanes, 49 Phil. 466, Union Garment Co., Inc. vs. Court of Tax Appeals, 4 SCRA 304*); and

10. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto and failure to sustain the same is fatal to the action for tax refund.

During the pre-trial conference held on June 23, 1999, counsels for both parties agreed that there was no legal issue involved in this case hence they submitted the following factual issues for resolution of the Court:

1. Whether or not Petitioner has unutilized creditable input VAT for the period January 1, 1997 to June 30, 1997 in the total amount of P40,980,909.87, arising from its domestic purchases of goods and services, and importation of capital goods, which is a proper subject of a claim for refund pursuant to Section 112 of the National Internal Revenue Code, as amended;

2. Whether or not the said creditable input VAT of the Petitioner for the period January 1, 1997 to June 30, 1997 are substantiated by documentary evidence in the form of invoices and official receipts; and

3. Whether or not said unutilized input VAT of the Petitioner for the period January 1, 1997 to June 30, 1997 was carried forward to the succeeding taxable quarter and applied against the output VAT of the Petitioner for the said period.

Due to the voluminous nature of the evidence to be presented, Petitioner engaged the services of the auditing firm, SGV & Co. In accordance with CTA Circular 1-95 as amended, Mr. Ruben R. Rubio, a Partner of SGV & Co, was commissioned by the Court on July 27, 1999 to conduct a special audit and examination of the various receipts, invoices and other long accounts which were the subject of the present claim (TSN, July 27, 1999, pp. 5 to 7).

A final report, dated February 28, 2000, was submitted detailing the audit procedures performed and the findings and observations that ensued after the examination, to wit: (Exh. B)

Findings and Observations

Based on the procedures we performed, we present below our findings and observations

Findings	**Input Taxes Claimed**		**Total**
	First Quarter	**Second Quarter**	
1. Purchase of Goods Supported by Document Other Than Qualified VAT invoices			
a. Supported by Qualified VAT Official Receipts (ORs)	43,004.04 [Exhibit A.1-1st qtr.]	5,154.00 [Exhibit A.1-2nd qtr.]	48,158.04

b. Supported by Other Documents (e.g. statement of accounts, provisional receipts)	-	19,877.22 [Exhibit A.2-2nd qtr.]	19,877.22
2. Purchase of Services Supported by Document Other Than Qualified VAT ORs			
a. Supported by Qualified VAT invoices	527,473.99 [Exhibit B.1-1st qtr.]	431,839.94 [Exhibit B.1-2nd qtr.]	959,313.93
b. Supported by Other Documents (e.g. statement of accounts, provisional receipts)	2,740.64 [Exhibit B.2-1st qtr.]	162,770.51 [Exhibit B.2-2nd qtr.]	19,877.22
3. Purchase of Goods Supported by Invoices Without qualified "TIN-V";"TIN-VAT" (***Note a***)	237,181.72 [Exhibit C-1-1st qtr.]	414,403.63 [Exhibit C-2-2nd qtr.]	651,585.35
4. Purchase of Services Supported by Invoices Without qualified "TIN-V" "TIN-VAT" (***Note b***)	654,198.44 [Exhibit D-1-1st qtr.]	461,715.04 [Exhibit D-2-2nd qtr.]	1,115,913.48
5. Purchase of Goods Supported by Invoices Not in the Company's Name	182,805.87 [Exhibit E-1-1st qtr.]	66,803.13 [Exhibit E-2-2nd qtr.]	249,609.00
6. Purchase of Services Supported by VAT ORs Not in the Company's Name	484.40 [Exhibit F-1-1st qtr.]	111.90 [Exhibit F-2-2nd qtr.]	596.30
7. Purchase of Goods Supported by Invoices Without BIR Permit	3,479.72 [Exhibit G-1-1st qtr.]	2,240.26 [Exhibit G-2-2nd qtr.]	5,719.98
8. Purchase of Services Supported by ORs Without BIR Permit	181.82 [Exhibit H-1-1st qtr.]	-	181.82
9. Purchase of Goods and Services which are Exempt from VAT	63.64 [Exhibit I-1-1st qtr.]	308.62 [Exhibit I-2-2nd qtr.]	372.26
10. Purchase of Goods and Services, Input Taxes of which are Erroneously Computed	2,440.60 [Exhibit J-1-1st qtr.]	241,192.21 [Exhibit J-2-2nd qtr.]	243,632.81
11. Purchases without supporting documents	321,495.37 [Exhibit K-1-1st qtr.]	890,853.40 [Exhibit K-2-2nd qtr.]	1,212,348.77

Total	**1,975,550.25**	**2,697,269.86**	**4,672,820.11**

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In addition, we would like to mention the following for the information of the Honorable Court:

1. We noted that input taxes amounting to P2,532,195.75 (broken down below) arising from importation of goods and local purchases of goods and services are supported only by photocopies of Import Entry Declarations/BOC ORs and VAT invoices/ORs, respectively:

	First Quarter	Second Quarter	Total
Importation	869,891.00 [Exhibit L-1st qtr.]	1,600.431.00 [Exhibit L-2nd qtr.]	2,470,322.00
Purchase of Goods	6,320.28 [Exhibit M-1st qtr.]	26,462.56 [Exhibit M-2nd qtr.]	32,782.84
Purchase of Services	-	29,090.91 [Exhibit N-2nd qtr]	29,090.91
Total	**876,211.28**	**1,655,984.47**	**2,532,195.75**

2. We further noted that input taxes amounting to P4,747,803.56 (broken down below) arising from local purchases of goods and services are supported by invoices and ORs, respectively, bearing dates not within the respective quarter.

	First Quarter	Second Quarter	Total
Importation	373,957.00 [Exhibit O-1st qtr.]	-	373,957.00
Purchase of Goods	1,307,372.85 [Exhibit P-1st qtr.]	1,013,404.29 [Exhibit P-2nd qtr.]	2,320,777.14
Purchase of Services	1,401,827.96 [Exhibit Q-1st qtr.]	651,241.46 [Exhibit Q-2nd qtr]	2,053,069.42
Total	**3,083,157.81**	**1,664,645.75**	**4,747,803.56**

3. Our review likewise disclosed that with respect to certain purchases of services, there is a difference between the input taxes claimed by the Company and the input taxes that we computed based on the amount

> indicated in the VAT official receipts issued by the supplier. We understand that this is due to the offsetting arrangement between the Company and the suppliers. That is, the amount which the suppliers owed from the Company was being deducted from the amount to be paid by the latter. As such, the VAT official receipts issued by the suppliers were only for the net amount paid by the Company.

	First Quarter	Second Quarter	Total
Input taxes claimed by the Company	6,288,878.18	5,294,513.50	11,583,391.68
Input taxes based on documents verified	4,479,572.77	3,027,694.21	7,507,266.98
Net Amount (due to offsetting)	**1,809,305.41** [Exhibit R-1st qtr.]	**2,266,819.29** [Exhibit R-2nd qtr.]	**4,076,124.70**

Respondent did not introduce any controverting evidence nor dispute the findings of the commissioned independent CPA. Petitioner, on the other hand, questioned the additional three informations disclosed by the auditor.

First, with respect to the photocopies of invoices, official receipts, and import entry declarations, Petitioner made an exception with respect to the auditor's disallowance of input taxes on importation of goods which were supported by photocopies of import entry declarations/BOC official receipts in the amount of P2,470,322.00.

Petitioner narrated that in October 1995, Commissioner Parayno issued Customs Administrative Order No. 2-95 which requires the importer (or its Customs Broker) to surrender its blue copy of the import entry declaration at the gate of the PPA in order for its imported cargo to be released (TSN, March 22, 2000). Therefore, Petitioner claimed that it was impossible to present its own copy of the original import entry declaration because this was already surrendered to the Port ushers as a gate pass.

We do not subscribe to the asseverations of Petitioner.

In the hearing held last March 22, 2000, the Court asked the Petitioner's witness, Ms. Valera, if a certified true copy could be secured from the Bureau of Customs and the said witness answered in the affirmative, thus:

JUDGE ACOSTA

(N)ow, when you want to get a certified true copy of the Import Entry, where can you get that?

MS. VALERA

Yes, from the Bureau of Customs, your Honors.

JUDGE ACOSTA

What department?

MS. VALERA

If the entry is with the Liquidation, we can get it from the Liquidation but if it is not there, from the Commission on Audit or COA.

JUDGE ACOSTA

So, you can get if you want?

MS. VALERA

Yes, if you want.

Mere photocopies of documents are inadmissible pursuant to the best evidence rule under Section 2, Rule 130 of the Rules of Court (**Gobonseng, Jr. vs. Hon. Court of Appeals 246 SCRA 472**). Since certified true copies of the import entry declarations can be had, this Court cannot consider mere photocopies thereof, in the computation of input taxes paid on importation.

Petitioner also disputes the report of the independent CPA as regards the disallowed input taxes on local purchases of goods and services which are supported by invoices and ORs, respectively, bearing dates not within the respective quarters of the claim amounting to P4,747,803.56. Petitioner explained that the mismatch between the period of the claim for refund and the dates appearing in the invoices and official receipts were due to timing difference of recognition (recording) of input taxes. Petitioner clarified that it usually takes two to three weeks for a delivery transaction from its Valenzuela warehouse to its mine sites in Itogen Province and Zambales area to be recorded back in Manila (TSN, March 22, 2000). The input taxes are only recorded in its books of accounts once the material receiving report from the mine sites together with the corresponding sales invoice are received in Manila. This is the reason why the input taxes disallowed by the independent CPA pertain mostly to the goods and services purchased during the last two weeks of the quarter which invoices or official receipts were dated outside the quarter they represent.

After taking into account the aforementioned explanation by the Petitioner as well as the evidence at hand, this Court reconsiders the input taxes that fall within the period of the claim (January to June 1997) which We had verified not to have been claimed (twice) in the succeeding quarter. However, We still maintain the exception of input taxes with dates that fall beyond the period January 1, 1997 to June 1, 1997. Below is a table for the recomputation of the net disallowed input taxes:

1997 First Quarter Account Code	Disallowance Per CPA Report	Reconsidered Input Taxes	Disallowed Input Taxes Per Court's Verification
DCO 0648	210,946.00	-	210,946.00

MCO 1703	163,011.00	-	163,011.00
BGO 0645	89,116.41	-	89,116.41
DCO 0452	973,496.51	10,638.64	962,857.87
BGO CHQ 0632	190.91	-	190.91
BGO-CHQ 0642	3,949.64	-	3,949.64
MCO 1702	104,360.39	-	104,360.39
MCO 1705	10,656.18	-	10,656.18
BAGO 0252	54,893.63	-	54,893.63
BAGO 0262	62,635.01	-	62,635.01
BGO CHQ 0615	8,074.17	-	8,074.17
MCO 1705	3,481.64	3,471.82	9.82
BGO 0633	165,583.04	119,248.67	46,334.37
DCO 0451	999,730.85	999,730.85	-
BGO CHQ 0615	14,476.92	14,476.92	-
BGO 0644	54,731.70	54,731.70	-
DCO 0450	14,714.63	8,292.92	6,421.71
MCO 1701	109,468.83	102,356.03	7,112.80
BAGO 0251	1,441.43	-	1,441.43
BAGO 0261	38,198.92	9,210 63	28,988.29
T O T A L	3,083,157.81	1,322,158.18	1,760,999.63

1997 Second Quarter

BGO-CHQ 064	2,590.91	2,590.91	-
BAGO 0252	91,249.70	91,249.70	-
BAGO 0262	183,848.31	183,848.31	-
BGO 0645	106,893.97	106,893.97	-
DCO 0452	535,275.05	494,313.79	40,961.26
MCO 1702	37,042.15	35,855.97	1,186.18
IRISAN	56,504.20	-	56,504.20
BGO CHQ 063	21,332.98	-	21,332.98
BGO CHQ 061	16,093.94	-	16,093.94
BGO 0644	48,304.32	-	48,304.32
DCO 0450	119,072.70	1,911.94	117,160.76
DCO 0451	289,783.92	-	289,783.92
MCO 01701	15,110.97	822.62	14,288.35
BAGO 0251	75,352.√-1	34,662.30	40,689.95
BAGO 0261	66,190.38	-	66,190.38
T O T A L	1,664,645.75	952,149.51	712,496.24
GRAND TOTAL	4,747,803.56	2,274,307.69	2,473,495.87

Lastly, We agree with the auditor in excluding the input taxes which were not covered by proper VAT official receipts. Section 102(c) of the Tax Code expressly provides the formula in computing for the input tax on sale of services which is determined by multiplying the total amount indicated in the *official receipt* by 1/11. To base the computation of input tax on other documents (i.e., the contract or statement of accounts) is erroneous because it is explicit that the input tax on sale of services shall be computed based only on the total amount indicated in the official receipt.

It bears stressing that the amounts of P23,581,103.82 and P17,399,847.91 sought to be refunded herein were not carried over nor applied to the succeeding quarters' output tax liabilities as evidenced by the 1997 first quarterly Value-Added Tax Return and the 1998 fourth quarterly Value-Added Tax Return (Annex A and Exh. C-6).

In sum, Petitioner is entitled to the refund of unutilized input VAT in a reduced amount of P27,226,273.24 , computed as follows:

NET INPUT VAT CLAIMED:		
1st Quarter 1997	P23,581,061.76	
2nd Quarter 1997	17,399,847.91	P40,980,909.67
LESS: EXCEPTIONS		
a. General disallowance made by the commissioned independent CPA		
1st Quarter 1997	P 1,975,550.25	
2nd Quarter 1997	2,697,269.86	P 4,672,820.11
b. Additional findings of the commissioned independent CPA		
1. Photocopies of Import Entry Declarations/BOC ORs and VAT invoices/ORs		
1st Quarter 1997	P 876,211.28	
2nd Quarter 1997	1,655,984.47	2,532,195.75
2. Invoices and ORs bearing dates not within the period		

of the claim (recomputed by the Court)		
1st Quarter 1997	P 1,760,999.63	
2nd Quarter 1997	712,496.24	2,473,495.87
3. Over-claimed input tax based on contracts/ statement of accounts		
1st Quarter 1997	P 1,809,305.41	
2nd Quarter 1997	2,266,819.29	4,076,124.70
Total exceptions		P13,754,636.43
NET AMOUNT REFUNDABLE		P27,226,273.24

WHEREFORE, in view of the foregoing, the Petition for Review is hereby *PARTIALLY GRANTED*. Respondent is **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of P27,226,273.24.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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