REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SEMIRARA MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7717

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

OCT 13 2009; 10:00am

x - x

DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

The instant Petition for Review is seeking that a judgment be rendered ordering respondent to refund to petitioner the amount of **ELEVEN MILLION EIGHT HUNDRED FORTY SEVEN THOUSAND FIFTY FIVE AND 07/100 PESOS (P11,847,055.07)** as final withholding Value-Added Tax (VAT) erroneously withheld by National Power Corporation (NPC) on sales of coal by petitioner to NPC for the month of December 2005 and remitted by NPC to the Bureau of Internal Revenue (BIR) on January 10, 2006, or, in the alternative, to issue a tax credit certificate in the same amount.

STATEMENT OF FACTS

Semirara Mining Corporation, herein petitioner, is a domestic corporation with principal office at 2nd Floor, DMCI Plaza Building, 2281 Don Chino Roces Avenue, Makati City.[1] It is registered with the Securities and Exchange Commission (SEC) as a corporation engaged in, among others, the exploration, mining, extraction and sale of ship coal, coke and other coal products and by-products and the acquisition, ownership and exercise of the rights and privileges under the coal operating contract/s, as stated in its amended Articles of Incorporation dated July 20, 2005.[2] Likewise, petitioner is registered with the BIR as a non-VAT enterprise with Taxpayer Identification No. (TIN) 000-190-324-000.[3]

Respondent is the duly-appointed Commissioner of Internal Revenue empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Petitioner, formerly Semirara Coal Corporation (SCC), is presently the operator of a coal mine in the Island of Semirara, Municipality of Caluya, Province of Antique. It is allegedly a holder of a Coal Operating Contract (COC)[5], executed on June 8, 1983 with the Philippine Government, as represented by then Ministry of Energy (now Department of Energy), through the Bureau of Energy Development (BED).[6]

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[1] Paragraph 1, Petition for Review, Docket, p. 2
[2] Paragraph 2, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 229
[3] Paragraph 1, Ibid; Exhibit "A"
[4] Paragraph 2, Supra, note 1
[5] Exhibit "C"
[6] Paragraph 5, Supra, note 1, Docket, p.3

The COC was allegedly executed pursuant to Presidential Decree (P.D.) No. 972, otherwise known as the "Coal Development Act of 1976," which implements the policy of the State to accelerate the exploration, development, exploitation, production and utilization of the country's coal resources. In line with this policy, Section 16 of the said decree provided for various incentives to operators. The section reads in part as follows:[7]

> "**Section 16.** *Incentives to Operators.* The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:
>
> a) Exemption from all taxes except income tax;
>
> b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts and materials required for the coal operations subject to the following conditions:
>
> xxx xxx xxx"

Petitioner stipulated that the COC mirrored the incentives provided in P.D. No. 972, as amended, to wit:[8]

> "**SECTION V. RIGHTS AND OBLIGATIONS OF THE PARTIES**
>
> xxx xxx xxx
>
> 5.2. The OPERATOR shall have the following rights:
> a) Exemption from all taxes (national and local) except income tax.
>
> xxx xxx xxx"

Petitioner sells its coal production, under its COC, to the NPC, a government-owned and controlled corporation, pursuant to a Coal Supply Agreement[9] executed

[7] Paragraph 6, Supra, note 1, Docket, pp. 3-4
[8] Paragraph 7, Supra, note 1, Docket, p. 4
[9] Exhibits "S", "S-1" and "S-2"

between NPC and SCC in 1995, which was subsequently amended in the years 2000, 2002 and 2007.[10]

Allegedly prior to the enactment of Republic Act (R.A.) No. 9337, the sale or importation of coal, in general, was exempt from VAT, as provided for under Section 109 of the National Internal Revenue Code of 1997 (1997 Tax Code), as amended, *viz:*[11]

> "**Section 109 . Exempt Transactions**.- The following shall be exempt from value added tax:
>
> xxx xxx xxx
>
> (e) Sale or importation of coal and natural gas, in whatever form or state, and petroleum products (Except lubricating oil, processed gas, grease, wax, and petrolatum) subject to excise tax imposed under Title VI;
>
> xxx xxx xxx
>
> (q) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529 and 1590;
>
> xxx xxx xxx"

Petitioner stated that R.A. No. 9337, which became effective in November 2005, deleted paragraph (E) of the above section, renumbered paragraphs (Q) to (K) and deleted P.D. Nos. 66 and 1590 therefrom;[12] thus, effective November 2005, on the alleged ground that sales of coal by petitioner were no longer exempt from VAT, the NPC started to withhold a tax of five percent (5%) or the final withholding

[10] Paragraph 8, Supra, note 1, Docket, p. 4
[11] Paragraph 9, Supra, note 1, Docket, pp. 4-5
[12] Paragraph 10, Supra, note 1, docket, p. 5

VAT on coal billings of petitioner, pursuant to Section 114 (C) of R.A. No. 9337, to wit:[13]

> "(C) Withholding of Value-added Tax. – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or –controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: xxx
>
> The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made".

Petitioner claimed to have protested the withholding made by NPC and filed a request for a BIR ruling with the Commissioner of Internal Revenue (CIR) confirming that the sale of coal made by petitioner was still exempt from VAT, notwithstanding the amendments to the 1997 Tax Code by R.A. No. 9337.[14]

While the request for BIR ruling was pending with the office of the CIR, the NPC continued to deduct and withhold the 5% final withholding VAT from the gross billings of petitioner, as admitted by NPC in its letter dated August 24, 2006.[15]

On March 7, 2007, the CIR issued BIR Ruling No. 0006-2007[16], confirming the position of the petitioner that its sale of coal remains exempt from VAT, to wit:[17]

> "xxx xxx xxx
>
> In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, SMC's sales of coal produced by virtue of a COC with EDB

[13] Paragraph 11, Supra, note 1, Docket, p. 5
[14] Paragraph 12, Supra, note 1, Docket, pp. 5-6
[15] Exhibit "E"
[16] Exhibit "J"
[17] Paragraph 15, Supra, note 1, Docket, pp. 6-7

> remain exempt from VAT pursuant to Section 109 (k) of the Tax Code, as amended by R.A. 9337, in relation to PD 972, as amended."

On May 21, 2007, petitioner filed with Revenue District Office No. 121 (RDO 121), Large Taxpayer's Division of the BIR, an Application for Tax Credits/Refunds (BIR Form No. 1914), together with supporting documents, for the amount of P11,847,055.07, representing final withholding VAT erroneously withheld by NPC on its payments for the month of December 2005 for petitioner's sales of coal to NPC, which was remitted by NPC to BIR on January 10, 2006.[18]

On December 21, 2007, petitioner filed with the Large Taxpayers' Audit and Investigation Division II (LTAID II) an amended Application for Tax Credits/Refunds (BIR Form No. 1914)[19] to reflect the correct amount of final withholding VAT of P11,847,055.07 erroneously withheld by the NPC on its payments for the month of December 2005 for sales of coal by petitioner to NPC.[20]

Due to RDO 121, LTAID II's and respondent's inaction on petitioner's administrative claim for refund or issuance of TCC for the final withholding VAT erroneously withheld by NPC on sales of coal by petitioner to NPC for the month of December 2005 and remitted by NPC to the BIR on January 10, 2006, petitioner filed the present Petition for Review on January 7, 2008 with this Honorable Court, praying for the refund or issuance of tax credit certificate in the total amount of P11,847,055.07, allegedly representing final withholding VAT erroneously withheld by NPC on the December 2005 sales of coal by petitioner to NPC.[21]

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[18] JSFI. Paragraph 4, Docket, p. 230
[19] Exhibit "L"
[20] Paragraph 5, Ibid, Docket, p. 230
[21] Ibid, Paragraph 6; Supra, note 1, Docket p. 1

Summons[22] was issued on January 16, 2008, which was received by respondent on January 17, 2008 and by the Office of Solicitor General on February 6, 2008.

In its Answer[23] filed on March 3, 2008, respondent averred the following Special and Affirmative Defenses:

> "5. Assuming without admitting that [p]etitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
>
> 6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 7. Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;
>
> 8. It is incumbent upon the [p]etitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended upon which its claim for refund is premised;
>
> 9. In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel and Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, P. 206*);
>
> 10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

Petitioner filed its Pre-Trial Brief[24] on March 25, 2008; while respondent filed its Pre-Trial Brief[25] on March 27, 2008. On March 28, 2008, the parties were ordered to submit their Joint Stipulation of Facts and Issues within fifteen days

[22] Docket, p. 205
[23] Docket, pp. 210-212
[24] Docket, pp. 214-223
[25] Docket, pp. 224-225

thereafter[26]. On April 16, 2008, the parties filed their Joint Stipulation of Facts and Issues[27].

During trial, petitioner presented testimonial and documentary evidence to prove its case. After petitioner's presentation of evidence, it filed its Offer of Documentary Evidence[28] on October 17, 2008, submitting Exhibits "A" to "T", inclusive of sub-markings. In a Resolution[29] dated February 4, 2009, the afore-mentioned exhibits were admitted, except for Exhibits "L", "M-1", "M-3" and "S-1" for failure of petitioner's counsel to present the originals thereof and Exhibit "S" for failure of petitioner's counsel to submit the duly-marked document to the Court. On February 24, 2009, petitioner filed a Motion for Partial Reconsideration[30] which the Court granted in the Resolution dated April 3, 2009[31], by admitting all denied exhibits.

Upon admission of petitioner's documentary evidence, the Court set the presentation of respondent's evidence on February 26, 2009[32], March 24, 2009[33] and April 30, 2009[34]. On April 30, 2009[35], respondent's counsel manifested that he will not present any evidence and that he is submitting the case for decision and the parties were directed to submit their respective Memorandum within thirty days from April 30, 2009. In a Resolution dated July 29, 2009,[36] the case was submitted

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[26] Docket, p. 227
[27] Docket, pp. 229-232
[28] Docket, pp. 304-315
[29] Docket, pp. 316-317
[30] Docket, pp. 319-322
[31] Docket, p. 329
[32] Docket, p. 317
[33] Docket, p. 323
[34] Docket, p. 329
[35] Docket, p. 331
[36] Docket, p. 386.

for decision, taking into consideration the parties' Memoranda, filed on June 9, 2009[37] for petitioner and on July 15, 2009[38] for respondent.

STIPULATED ISSUES

The parties submitted the following issues[39] for this Court's resolution:

"1. Whether petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P11,847,055.07, representing the final withholding VAT withheld by NPC on its payments for the month of December 2005 for petitioner's sales of coal to NPC, and remitted by NPC to the BIR on January 10, 2006.

2. Whether petitioner's claim for tax credit certificate of the final withholding VAT withheld by NPC on its payments for the month of December 2005 is duly substantiated by documentary evidence.

3. Whether Presidential decree No. 972 (1976) otherwise known as the 'Coal Development Act of 1976,' was repealed by Republic Act No. 9337 (2005)."

The above-enumerated issues can be summarized into a single issue, to wit:

"Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P11,847,055.07, representing the final withholding VAT withheld by NPC on its payments for the month of December 2005 for petitioner's sales of coal to NPC, and remitted by NPC to the BIR on January 10, 2006."

THE COURT'S RULING

Petitioner maintains that it is entitled to a refund or issuance of a TCC in the amount of P11,847,055.07 because as specified in Section 5.2 of the COC and Section 16 (a) of P.D. No. 972, its sales of coal are exempt from VAT, to wit:

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[37] Memorandum of petitioner, Docket, pp. 337-371
[38] Memorandum of respondent, Docket, pp. 378-384
[39] Joint Stipulation of Facts and Issues, Docket, pp. 229-233

**"Presidential Decree No. 972
Promulgating an Act to Promote an Accelerated
Exploration, Development, Exploitation,
Production and Utilization of Coal**

"**SEC. 16.** *Incentives to Operators.* The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have shall have the following incentives

(a) Exemption from all taxes except income tax;

xxx xxx xxx"

"Section V. Rights and Obligations of the Parties

xxx xxx xxx

5.2. The OPERATOR shall have the following rights:
(a) Exemption from all taxes (national and local) except income tax.

xxx xxx xxx"

In support thereof, petitioner avers that the spirit behind the law, is to accelerate the exploration, development, exploitation, production and utilization of the country's coal resources, and to provide incentives not only to coal users, but more importantly, to operators of coal operating contracts. The petitioner further argues that it is clear from the wordings of Section 16 of P.D. 972, that a coal operating contract may provide for an incentive, notwithstanding the provisions of any law to the contrary. In effect, the petitioner is saying that the provisions of the coal operating contract granting exemptions from all taxes other than income tax will prevail over any provisions of the law to the contrary, provided that the VAT arose in connection with the operation of a coal mine under a duly approved COC.

In addition, petitioner points out a BIR ruling[40] which states that coal operators are exempt from VAT provided that such exemption is incorporated into the service and operating contracts granted by the government. Lastly, petitioner stresses that despite the amendments to the 1997 Tax Code, specifically the deletion of Section 109(e) of R.A. 8424 and the effectivity of the repealing clause in R.A. 9337, coal sales by Coal Operating Contract operators remain exempt from VAT. Again, petitioner supported its claim by pointing out the same BIR Ruling[41], where it confirmed that the exemption from coal operators as provided in P.D. 972 subsists and continues to be covered by Section 109 (k) of the 1997 Tax Code, as amended by R.A. 9337.

On the other hand, respondent claims that with the advent of R.A. 9337, the exemption under Section 109 (e) of the 1997 Tax Code was deleted, and renumbered paragraph (q) to paragraph (k) and deleted P.D. No. 66 and 1590 therefrom. He further states that, the tax exemption under P.D. 972 has been effectively repealed by R.A. 9337 since the tax exemption granted therein may be repealed by a subsequent special law on tax, in this case, by RA 9337.

We agree with petitioner.

The inherent power of the state to impose taxes includes the power to grant tax exemptions. Tax exemptions may be granted either by the Constitution or by an act of legislature, subject to limitations as the Constitution may provide[42].

The tax exemption being availed of by the petitioner is a tax exemption granted by an act of legislature, which is, P.D. No. 972. Under Section 16 of the said

[40] VAT Ruling No. 557-88 dated December 3, 1988 (addressed to Mr. W.R. dela Paz, Executive Director, Office of Energy Affairs), paragraph 24, Petition for Review, Docket, pp. 10-11
[41] Memorandum for petitioner, Docket, p. 360
[42] J. B. Dimaampao. TAX PRINCIPLES AND REMEDIES. 112 (3rd ed. 2008)

law, operators of coal operating contracts are given various incentives, which include exemption from all taxes except income tax. Furthermore, the said incentive or tax exemption provided for by P.D. 972 was embodied and incorporated in Section 5.2 of the Coal Operating Contract between petitioner and the Philippine Government. In the present case, the petitioner is seeking exemption from VAT. As provided under Section 21 of the 1997 Tax Code, VAT is one of the national internal revenue taxes, hence, exemption from VAT falls within the exemptions provided by P.D. 972 and its Coal Operating Contract. Furthermore, petitioner's claim for exemption from payment of the VAT is also covered by the 1997 Tax Code notwithstanding its amendment by R.A. 9337, as provided by Section 109 (K), which reads as follows:

> **"REPUBLIC ACT NO. 9337**
>
> **AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES**
>
> **Sec. 7.** Section 109 of the same Code, as amended, is hereby further amended to read as follows:
>
> > SEC. 109. *Exempt Transactions.*- (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
> >
> > > xxx xxx xxx
> > >
> > > (K) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529;
> > >
> > > xxx xxx xxx" (Emphasis supplied)

Based on the aforequoted provision of Section 109, petitioner is entitled to exemption from VAT since its sale of coal is exempted from VAT as provided under a special law, which is PD 972.

In its last effort to prove that petitioner is not entitled to a tax refund or to be issued a tax credit certificate, respondent avers that the tax exemption under P.D. 972 has been effectively repealed by R.A. 9337, specifically by Section 24, which provides:

> "**Sec. 24** *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
>
> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.
>
> xxx xxx xxx."

Petitioner maintains that P.D. No 972 was not expressly or implied repealed by the passage of R.A. No. 9337 based on the following reasons: first, there was no express repeal since the repealing clause of R.A. No. 9337, does not include P.D. No. 972 in the enumerated laws which it expressly repealed; second, P.D. No. 972 cannot be repealed impliedly since it is a special law. To support its claim, petitioner points out the ruling of the Supreme Court in the case of *People vs. Palma*[43], where the Supreme Court held that "(a) general law cannot repeal a special law by mere implication. The repeal must be express and specific..."[44] Also, petitioner avers that the repealing clause of R.A. No. 9337 cannot operate to repeal the provisions of P.D. No. 972 since it fails to designate the specific act/s, identified by number or title, that are intended to be repealed.

We rule in favor of the petitioner.

As enunciated by the Supreme Court in the case of *Spouses Recaña Jr. vs Court of Appeals,*[45] basic in statutory construction is the rule that the enactment of a later legislation which is a general law cannot be construed to have repealed a special law unless expressly so stated. Furthermore, the Supreme Court ruled in *Laguna Lake Development Authority vs. Court of Appeals,*[46] that a "special statute, provided for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and applications, unless the intent to repeal or alter is manifest although the terms of the general law are broad enough to include the cases embraced in the special law."

In the case at bar, there is no express repeal since as stated by the petitioner, there is no express mention of P.D. 972 in the repealing clause of R.A. 9337. As ruled by the Supreme Court in the case of *Mecano vs. Commission on Audit,*[47] it is settled that an express repeal is a declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number and title is repealed; all other repeals are implied repeals. Likewise, there cannot be an

[43] 76 SCRA 243 (1977)
[44] Ibid, at p. 246
[45] G.R. No. 123850, January 5, 2001
[46] 251 SCRA 42,56 (1995)
[47] 216 SCRA 500,504 (1992)

implied repeal since repeal of laws should be made clear and expressed.[48] Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject;[49] Furthermore, a law cannot be deemed repealed unless it is clearly manifest that the legislature so intended it.[50] Considering that the exemption of petitioner from all taxes except income tax, as provided by P.D. 972, is not enumerated in Section 24 of R.A. 9337, the tax exemption of petitioner still subsists.

In summary, the Court finds petitioner exempted from final withholding VAT, hence entitled to the refund or issuance of tax credit certificate in the amount of P11,847,055.07, withheld by the NPC and remitted to the BIR in connection with petitioner's sales of coal for the month of December 2005.

WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P11,847,055.07, representing its erroneously paid final VAT withheld by National Power Corporation on sales of coal by petitioner to National Power Corporation for the month of December 2005 and remitted by National Power Corporation to Bureau of Internal Revenue on January 10, 2006.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[48] Supra, note 43, citing J.C. Vitug. COMPENDIUM OF TAX LAW AND JURISPRUDENCE 404 (3rd ed. 1993)
[49] City Government of San Pablo, Laguna vs. Reyes, 305 SCRA 353,360 (1999)
[50] Intia, Jr. vs. Commission on audit, 306 SCRA 593,609 (1999)

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division