REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARINDUQUE MINING &
INDUSTRIAL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3192

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

2/28/85

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DECISION

This is a judicial claim for refund of the sum of ₱365,683.20 as documentary stamp taxes affixed on four (4) fire insurance policies obtained by petitioner from the Philippine American General Insurance Company covering its mining equipments, buildings, and other mining properties connected in its mining operations in Surigao del Norte during the periods from February 21, 1979 to February 21, 1980.

It appears that petitioner had acquired four (4) fire insurance policies from the aforesaid fire insurance company, the Philippine American General Insurance Company, during the periods stated, with Policy Nos. F-173866, F-173905, F-177030, and F-189579, effective on February 21, 1979, March 1, 1979, April 24, 1979 and February 21, 1980 (Exhs. B, C, D, & E), respectively. The aforementioned policies contained endorsements

(Exhs. B-1, C-1, D-1, and E-1) to the effect that all the documentary stamp taxes affixed thereon shall be for the account of, and were in fact paid by petitioner. The corresponding amounts of documentary stamp taxes paid and affixed by the petitioner on the said fire insurance policies acquired are as follows:

Policy No.	Documentary Stamp Taxes Paid
F-173866	₱ 175,680.15
F-173905	₱ 11,237.55
F-177030	₱ 7,708.50
F-189579	₱ 171,057.00
	₱ 365,683.20

The total amount of documentary stamp taxes paid and affixed for the period in question, or from February 21, 1979 to February 21, 1980, therefore, is ₱365,683.20, which amount is now the subject of petitioner's claim for judicial refund.

It appears further that petitioner had, since July 3, 1968, an operating agreement with the Republic of the Philippines and continues to this date as an operator engaged in the development of the Surigao Mineral Reservation in Surigao del Norte and in the exploration and utilization of mineral deposits therein, other than nickel, cobalt and iron, apparently in order to meet and to take advantage of the increased world demand for mineral resources. This development, exploration and utilization of the mineral deposits aforesaid, of which petitioner is a participant, was with the intent to substantially help the Government in the generation of much needed foreign exchange in the face of the international economic recession brought about by the energy or petroleum crises. Accordingly, the Government had rationalized its policies in the development of the Surigao Mineral Reservation towards giving more opportunity to private enterprises, of which petitioner is one of them, and which is willing to take the risk and which will undertake the generation of adequate technical and financial resources so as to achieve that goal of mineral development. Hence, on September 22, 1976, President Ferdinand E. Marcos had deemed it necessary to issue, and had in fact promulgated Presidential Decree No. 1001 and decreed, among others, by inserting Section 6-A to Republic Act No. 1828, as amended, and providing categorically that operators contracted in the development, exploitation and utilization of mineral deposits in the Surigao Mineral Reservation, shall be subject to the most minimum of terms and conditions, among others, and which are pertinent to the case at bar, firstly, (1) by paying to the Government only a royalty of 5% of the gross annual receipts resulting from the operation, processing and disposition of mineral deposits; secondly, (2) that the said operator or contractor shall be "exempt from all taxes, duties, fees and charges, both national and local, directly payable by it for any work or activity, equipment, machinery, materials, instruments, supplies, accessories, structures, buildings, lands, improvement, and/or other properties directly connected with or needed in the operation xxx and exempt those fees and charges that are imposed for work or services actually rendered to the operator"; thirdly, (3) that the operator shall furnish all the management, technological and financial services necessary to carry out the operation; and, fourthly, (4) the operator or contractor shall file a bond to guarantee full and fruitful compliance with all its obligations.

The pertinent provisions of P.D. 1001 (Phil. Pres. Decrees & Other Legal Doc., Vol. 38, CBS, Inc., pp. 56-60.) and as far as it is applicable with the instant case, is quoted hereunder:

"PRESIDENTIAL DECREE NO. 1001

AUTHORIZING THE DEVELOPMENT, EXPLOITATION AND UTILIZATION OF MINERAL DEPOSITS OTHER THAN THOSE OF NICKEL, COBALT AND IRON WITHIN THE SURIGAO MINERAL RESERVATION, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 1828 AND REPEALING PRESIDENTIAL DECREE NO. 958.

WHEREAS, there is an urgent need to maximize the development, exploitation and utilization of mineral deposits other than those of nickel, cobalt and iron within the Surigao Mineral Reservation in order to take advantage of the increased world demand for mineral resources;

WHEREAS, the immediate development, exploitation and utilization of mineral deposits other than nickel, cobalt and iron within the Surigao

Mineral Reservation will substantially help the Government in the generation of much needed foreign exchange in the face of international economic recession brought about by the energy crisis;

WHEREAS, there is a need to make the existing laws on the administration and disposition of the Surigao Mineral Reservation more responsive to prevailing circumstances and to modify and rationalize Government policies in the development of the said Reservation towards giving more opportunity to private enterprises willing to take risk and can generate adequate technical and financial resources for mineral development.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order and decree the following:

SECTION 1. Republic Act No. 1828, as amended, is further amended by inserting between Section 2 and 3 thereof, the following section:

> 'SEC. 2(a). The provisions of Section 2 hereof notwithstanding, the President of the Philippines, in the interest of the national economy, may authorize the Bureau of Mines to explore, develop and exploit mineral deposits, other than those of nickel, cobalt and iron, within the Surigao mineral reservation, either directly or through a qualified contractor or contractors under an operating contract selected after public bidding or negotiation. The contract herein authorized shall, subject to the approval of the President, be executed by the Secretary of Natural Resources upon recommendation of the Director of Mines. The term of the contract shall be for twenty-five (25) years, renewable for another twenty-five (25) years.'

SEC. 2. The same Act is further amended by inserting between Sections 6 and 7 thereof the following new sections:

'SEC. 6-A. Should the President of the Philippines decide to have the operation or any part thereof conducted as authorized by Section 2-A hereof, the same shall be subject to the following minimum terms and conditions:

(a) The operator shall pay and guarantee payment to the government out of the gross annual receipts from all minerals, mineral and metal products, and by-products resulting from the operation, processing and disposition of mineral deposits, other than those of nickel, cobalt and iron, a royalty of not less than five per centum (5%) of the said gross annual receipts. F.O.B. points of export beginning with the end of the first year after the effective date of the contract: Provided, That the operator shall from the effective of the contract up to and including the fifth year after commencement of actual production, be exempt from all taxes, duties, fees and charges, both national and local, directly payable by it for any work or activity, equipment, machinery, materials, instruments, supplies, accessories, structures, buildings, lands, imporvement, and/or other properties directly connected with or needed and to be used or being used exclusively in the operation, other than those provided in this Act and except those fees and charges that are imposed for work or services actually rendered to the operator: Provided, futher, That the operator shall put in operation the area or areas covered by the contract within two (2) years from the effective date of the contract. Thereafter, penalties may be applied against the operator for failure to effect such production and/or reach certain levels of production within specific time periods, as may be agreed upon: Provided, finally, That exemptions from taxes shall not extend to taxes due from contractor's personnel in their personal capacities;

(2) The operator shall furnish all the management, technological and financial services necessary to carry out the operation;

(3) The operator shall file a bond to guarantee full and faithful compliance with all its obligations;

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xxx xxx xxx

SEC. 5. This Decree shall take effect immediately.

DONE in the City of Manila this 22nd day of September, in the year of Our Lord, nineteen hundred and seventy-six." (Underscoring supplied.)

After noting that the continued development of the Surigao Mineral Reservation has become more important to the national economy and that the costs of operations in such development has greatly increased, President Ferdinand E. Marcos, deemed it necessary to extend, and in fact extended the exemptions already granted to contractors and/or operators under P.D. 1001, by reason of which he forthwith later issued Presidential Decree No. 1714, which further amended paragraph (1) of Section 6 of Republic Act No. 1828, as amended. The pertinent provisions of paragraph (1) of said Section 6, as amended by P.D. 1714 (Phil. Pres. Decrees & Other Vital Legal Docs., Vol. 74, CBS, Inc., pp. 47-48) provides as follows:

"SECTION 1. Paragraph (1) of Section 6 of Republic Act No. 1828, as amended, is hereby further amended to read as follows:

(1) The operator shall be paid for services rendered and expenditures incurred beginning with the end of the first year after the effective date of the contract the sum of one pesos (₱1.00) per year, and the operator shall receive by way of additional compensation, an amount equivalent to a portion of the gross annual receipts, from all minerals, mineral and metal products, and by-products resulting from the

> operation, processing, and disposition thereof computed such that the Government shall retain not less than three and one-half per centum of the gross annual receipts, f.o.b. point of exports: Provided, That the operator shall, from January 1, 1980 to December 31, 1981, be exempt from all taxes, duties, fees and charges, both national and local, directly payable by it for any work or activity, equipment, machinery, materials, instruments, supplies, accessories, structures, buildings, lands, improvements and/or other properties directly connected with or needed and to be used or being used exclusively in the operation, other than those provided in this Act and except those fees and charges that are imposed for work or services actually rendered to the operator: Provided, however, That the operator shall put the are or areas covered by the contract into actual production within five years from the effective date of the contract. Thereafter, penalties may be applied against the operator for failure to effect such production, and/or reach certain levels of production within specific time period, as may be agreed upon: And Provided, further, That exemptions from taxes shall not extend to taxes due from contractor's personnel in their personal capacities.
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> SEC. 3. This Decree shall take effect immediately.
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> Done in the City of Manila, this 21st day of August, in the year of Our Lord, nineteen hundred and eighty. (Underscoring supplied.)

On the strength of the above provisions of law, and considering itself under the ambit of said laws (P.D. 1001 and P.D. 1714) as a tax-exempt operator, petitioner wrote a letter to respondent on December 9, 1980, claiming for the refund of the aforesaid sum of ₱365,683.20 as erroneously paid documentary stamp taxes affixed on the four (4) fire insurance policies to insure its mining equipment, buildings, and other properties, consisting of refinery, chemical plant, explosives, mine and mobile equipment, etc. connected and used in its mining operations in Surigao Mineral Reservation in Surigao del Norte. (see Annex A, Petition for Review, p. 4, CTA rec.) Despite its formal request, this claim for refund was never acted upon by respondent Commissioner of Internal Revenue. Hence, petitioner filed its judicial claim for refund in a "PETITION" brought to Us on January 20, 1981.

The issue to be disposed of in this instant case is whether or not petitioner is exempt from the documentary stamp taxes it paid on the four (4) insurance policies obtained from the Philippine American General Insurance Co., Inc.

Petitioner contends affirmatively that it is exempt from the payment of the documentary stamp taxes on the strength of the provisions of P.D. Nos. 1001 and 1714 of President Marcos. It argues that it is not only its equipments or other property that is exempt under said laws but also any "activity" it may perform subject to tax, and which is necessarily connected with, or needed, in the efficient operation of petitioner like in the case of the insurance obtained by it on its mining equipments and properties, and which are to be given as security on a loan, and which procurement of such insurance is a condition sine qua non before it can borrow or secure loans from lending institutions, in this case the DBP and PNB, for money which is needed in its operations.

On the other hand, respondent contends otherwise. He argues most strongly that documentary stamp taxes petitioner paid is not directly payable by it, but instead payable by the insurer, Philippine American General Insurance Co., and this is in order to prevent tax evasion. Finally, he argues that not all activities or transactions relative to petitioner's mining operations are entitled to exemptions, which relates only to those connected in the development, exploration and utilization of mineral deposits with the Surigao Mineral Reservation. He asserts that the affixture of documentary stamps on insurance policies is an imposition on a transaction intended to indemnify petitioner againsts loss or damage to properties caused by fire, lightning, typhoon, earthquake as stipulated in the insurance policies; hence, this transaction is distinct and separate from, and is not directly connected with, petitioner's mining operations with the Surigao Mineral Reservations. He further contends that insurance is not indispensable, but only incidental to petitioner's operation. Finally, he maintains that exemptions from taxation is strictly construed against the taxpayer and the law granting the tax exemption must be clear and beyond doubt extends the exemption privilege to the taxpayer. In conclusion, respondent avers that petitioner failed to show that payment of the documentary stamp tax is within the scope of its tax exemption privilege under P.D. 1001 as amended by P.D. 1714.

The laws (P.D. 1001 and P.D. 1714), as pertinently quoted heretofore, clearly evoked that clearest intention to bail out operators, which petitioner in this case undoubtedly falls, from the increasing cost of their operations, which of course entails increased expenditures in all areas and facets of operations of the mining business, and in order to help in great measure their mining business, extended to them exemptions "from all taxes, duties, fees and charges, xxx directly payable by it for any work or activity, equipment, machinery xxx." It was particularly emphasized by President Marcos as an outlying policy that one of the reasons for the promulgation of P.D. 1001 was to "xxx rationalize Government policies in the development of the said (Surigao Mineral) Reservation towards giving more opportunity to private enterprises willing to take risks and can generate adequate technical and financial resources for mineral development." When, therefore, P.D. Nos. 1001 and 1714 exempts from "taxes, duties, fees and charges" operators and contractors of the Surigao Mineral Reservation, it referred to all taxes, duties, fees and charges paid in relation not only to their properties, but also to their necessarily connected activities.

When the two (2) laws (P.D. Nos. 1001 and 1714) included as exempt an "activity" of the petitioner as operator and contractor of the Surigao Mineral Reservation, the term or word "activity" in those laws is understood in its usual or ordinary signification. Note that P.D. Nos. 1001 and 1714 did not define that word "activity". The term "activity", therefore, in a statute, in the absence of a definition, is given its usual and ordinary meaning; of its natural or normal function of operation. (Carbide & Carbon Chemicals Corp. v. Carson, 239 S.W. 2d 27, 36, 37, 192 Tenn. 150, cited in 2 Words & Phrases, 1954 Cumulative Annual Pocket Part, p. 42.) The word "activity" is also understood as an occupation, pursuit, in which a person is active and often referred to generally as business activities. (Webster's Third New International Dictionary, 1976 Ed., p. 22.) Sometimes, "activity" is referred to an organizational unit for performing a specific function, that is, the performance of functions and duties. (Webster's New Collegiate Dictionary, 1977 Ed., p. 12.) Also, it means the acts of one or several persons in a common enterprises. (2 Words and Phrases 154)

The literal term "activity" in P.D. 1001 and P.D. 1714, taken in relation to any business, includes an act, or series of acts, performed by the operators of the Surigao Mineral Reservation, like the petitioner in this case, connected in the carrying of, or properly doing its business . So much so that where a corporation, like the petitioner, borrows money for its capital from lending institutions to be used in its mining activity, it was properly a carrying on of an activity - a business activity. (Celanese Lanese Corp. v. Higgins, DCNV, 86 F Supp. 667, 670, cited in 6 Words & Phrases 57, 1954 Cumulative Annual Pocket Part) Said the U.S. District Court S.D. New York, in the cited case of Celanese Lanese Corp. at pages 669-670, ibid.:

> "xxx. Entering into contracts for the purchase of property or the construction of a plant are also corporate acts and constitute doing business. In other words, it is not necessary that a corporation be actually engaged in the manufacture of its intended product or that it be actually creating profit or gain to incur liability, since making contracts, buying materials or machinery, and employing or discharging individuals are necessary business acts leading to the ultimate attainment of the objects and purposes for which the corporation was created and has its existence."
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> "(1) The test which produces consistent results in all the cases cited is whether the taxpayer's activities were confined to perfecting its corporate organization, or whether, its period of legal gestation having been completed, it had actually entered into the world of business. See Cargill, Inc., v. United States, D.C., Del. 1942, 46 F. Supp. 712, 714-715.
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> "(2) Here the taxpayer after being fully organized and capitalized, borrowed capital and bought property to be used in its manufacturing activity. xxx"

It is not, therefore, right to say that the activity of petitioner, in borrowing money from lending institutions such as the DBP and the PNB, which loans shall be secured by the mortgage of its properties required to be first insured under a non-life insurance for which it was required to pay the documentary stamp taxes, a condition sine qua non to the granting of a loan, is not exempt from documentary stamp taxes under P.D. Nos. 1001 and 1714. On the contrary, the acquisition of insurance policies on petitioner's properties, and the payment of documentary stamp taxes on said policies are naturally a part of its on-going business activities. Petitioner, therefore, under that circumstance is clearly and undoubtedly intended by President Marcos to be exempt under said decrees. This exemption is not only true to petitioner, but also to all those taxpayers similarly situated, or those engaged in and under the same or similar businesses, and particularly, those participating in the development, exploitation and utilization of the mineral deposits within the Surigao Mineral Reservations. Because of the clarity of the terms of the exemption laws aforesaid (P.D. Nos. 1001 and 1714), we can see the exemption of petitioner from documentary stamp taxes in that light.

Moreover, Presidential Decrees Nos. 1001 and 1714, are accorded the status of legislative enactments

(Aquino, Jr. vs. Enrile, 59 SCRA 183; De Chavez vs. Zobel, 55 SCRA 26, 31.) and, hence, like any other laws or statutes, their essence is their intent, their policy, their purpose or their objective; and it is the judicial duty of this court to ascertain the essence of the law; and after knowing it, it becomes our distinct duty to declare and carry it into judicial effect. (Vda. de Macabenta vs. Davao Stevedoring Terminal Co., 32 SCRA 553, 557; Sarcos vs. Castillo, 26 SCRA 853, 859-861; U.S. v. Toribio, 15 Phil. 85, 90; Riera v. Palmaroli, 40 Phil. 105, 113; Comm. of Customs vs. Caltex, 106 Phil. 829, 833-834.)

We should all bear in mind that the terms or language of statutes, which expresses a definitely sensible and rational meaning, shall provide the safest guide as to statutory policy or intent, to which we must be obedient too, and deviation therefrom we cannot be allowed. (Bell Hobart Manufacturing Inc. vs. Comm. of Customs, CTA Nos. 2750, etc., March 10, 1978; Campos Rueda Corp. vs. Comm. of Int. Rev., CTA 2828, Aug. 15, 1984, citing Procter & Gamble Phil. Mfg. Corporation v. Comm. of Customs, CTA 2788, Feb. 27, 1981.) The terms of P.D. Nos. 1001 and 1714 provide the statutory policy of giving exemption to any activity of petitioner related to its mining business with the Surigao Mineral Reservation.

When the terms or mandate of the law is clear, the rule that exemption from taxation, or from the common burden of paying a tax is disfavored in law, becomes inapplicable. The clear objective of the law must perforce have to be carried into effect. (Sarcos vs. Catillo, op. cit; Helvering vs. Hammel, 311 US 504, 510, 512; Frank Trust of 1931 vs. Comm., 145 Fed 411, 413.) While, it is true that tax exemption must be strictly construed against the taxpayer, it is not so where the tax exemption law is very clear. There is also that prohibition against the narrow application of tax exemption; narrower than what the statute itself provides. Exemption laws should not be read so grudgingly as to thwart the purpose of the lawmakers, (and in this case, the intent of President Marcos) (Waynesboro Manufacturers Assoc. v. Comm., 1 BTA 911, 915; Sue v. Hord, 12 Phil. 485; U.S. vs. Toribio, 15 Phil. 85; Sarcos vs. Castillo, op. cit, pp. 859-961; Riera vs. Palmaroli, 40 Phil. 105; Comm. of Customs vs. Caltex, 106 Phil. 829.) The Supreme Court, speaking through Chief Justice Fernando, admonished all courts to the effect that in the course of interpretation and construction of the law, significations of words and verbal distinctions should be minimized in favor of the rule of carrying the clear objective thereof (Sarcos vs. Castillo, op. cit.), and between conflicting theories of the litigants, that which best accords with the purpose or policy of the law must prevail. (Vda de Macabenta vs. Davao Stevedors Terminal Co., op. cit; Sue vs. Hood, 12 Phil. 485; U.S. v. Toribio, op. cit; Riera vs. Palmarilo, op. cit.; Comm. of Customs vs. Caltex, op. cit.; Sarcos vs. Castillo, op. cit.) Our eyes can not be myopic of this fact. As a matter of legal knowledge, this Court is not free to reject or shun aside the literal words of the statute which convey its true intent and purpose. (Jacob Mertens, Law of Federal Income Taxation, Vol. 1, 1956 Ed., Chap. 3, Sec. 302, pp. 3-4, citing Bankers Trust Co. vs. Comm., 33 BTA 746, 747; Waynesboro Manufacturers Assoc. vs. Comm., op. cit.; Helvering v. Hammel, op. cit.; WK Frank Trust of 1931 vs. Comm., 145 F 2d 411,413.)

The rule that exemption from taxation is a matter of grace and highly disfavored in law should not be applied with regards to Presidential Decrees Nos. 1001 and 1714. There is a limit to such a strict interpretation. There is a "limit to the technical interpretation even of an exemption statute." (Comm. vs. White's Estate, 144 F 2d 1019, 1021; Jacob Mertens, Law of Federal Income Taxation, Vol. 1, 1955 Ed, Chap. 3, Sec. 3.02, pp. 3-4, citing Bankers Trust Co., op. cit.; Waynesboro Manufacturers Assoc. v. Comm., op. cit.) While laws providing exemptions from taxation should be strictly construed, this rule must finally and definitely bow to the clear literal words, or statutory language or policy of said exemption law. (Philip Zinet, Law of Federal Income Taxation Cumulative Supplement, Vol. 1, Sec. 308, p. 14, citing City Bank Farmers Trust Co. v. Pedride, 168 F 2d 618.) In effect, restriction or strict applic-action of the rule that exemption from taxation is disfavored in law does not always apply, as we think it does not properly apply under the law and circumstances of this instant case.

It must be borne in mind that petitioner plays a very important role to the frenzied development, exploitation and utilization of mineral deposits in the Surigao Mineral Reservation which greatly help the Government in the generation of much needed foreign exchange in this time of economic recession, and in view of this, it is the rationalized policy of Government therefore to give exemptions like petitioner in P.D. Nos. 1001 and 1714 from documentary stamp taxes. In addition, petitioner is a highly capital intensive industry. It certainly use up a great amount of material and financial resources in the maintenance and operation of its business, and this is so in order to comply with its commitment and other obligations to the Government under its operating contract. It was only but rational that sufficient assistance and protection is given to petitioner's industry by the granting of exemption, as expressed in the explanatory notes of P.D. No. 1001, which exemption was evidently granted as an "act of public policy", when President Marcos therein said that "xxx there is a need to make the existing laws on the administration and disposition of the Surigao Mineral Reservation more responsive to prevailing circumstances and to modify and rationalize Government policies in the development of the said Reservation towards giving more opportunity to private enterprises willing to take risk and can generate adequate technical and financial resources for mineral development." (Par. 3, P.D. 1001, Phil. Pres. Dec. & Other Vital Legal Docs., CBS, Inc., p. 57.) It is evident that the exemption granted to petitioner is a matter of public policy and intent, and not a matter of grace and favor by the Government. Tax exemptions that are begotten of public policy are granted to organizations whose activities and services redound to the public interest and welfare, like the activity of petitioner in availing itself in the development of mineral resources, an area in which if otherwise operated by the Government itself, it will entail great drain in its financial resources. Tax exemptions granted to organizations of this kind, like petitioner in this case, is liberally construed and applied. (Jacob Mertens, ibid, citing Estate of Emily Tait, 11 TC 731, 737; Comm. v. White's Estate, op. cit.)

In this particular case, petitioner had established by the law, the evidence, real and testimonial, of its being clearly under the plain and unambigous exemption grant from the payment of documentary stamp taxes. There is proof that one of the natural business activities, regardless of any line of business one undertakes, is the procurement of loans to capitalize, to finance, or to pay for its projects and operations or to otherwise settle its obligations. Consequently, where it borrows money to finance its business and, in the occasion, it insures its properties as required in order to be able to avail of the loan, and pays the documentary stamp taxes on the insurance policies acquired, that is a natural part of its business activity; and such activity is not only connected with, but indispensable, for it can not expect to borrow money if it will not insure its properties to stand securities for the loan as required by the banking institutions. If it will fail to borrow money for its operations and profits, then such failure will understandably adversely affect the administration and operations of its mining business. Moreover, we agree with petitioner that getting an insurance on its properties is a normal and necessary business activity, and is now the prevalent practice of prudent businessmen, and that insurance is related to petitioner's activity as a mining operator because the

DBP and PNB, who loaned money to petitioner made the insurance a requirement or condition for the loan. (Testimony of Asst. Vice-Pres. Domingo Beltran, Surigao Nickel Refinery, pp. 9-14, t.s.n., Hearing of July 15, 1982.) The testimony of Vice-Pres. Beltran has not been controverted by respondent.

Moreover, the exemption of petitioner from the payment of documentary stamp taxes on its "activity", does not confine the act only on those activities directly in relation to the mining business. The exemption laws (P,D. Nos. 1001 and 1714) do not qualify whether the "activity" which is exempt is one directly related to its business, or merely incidental to the same. When the law grants an exception on the basis of a term in the law, and that law does not make any distinction of that term, then distinction should not be made. Very well known is the legal principle: Ubi lex non distinguire debemos. When the decree, or the law, does not distinguish, neither the respondent nor this Court is authorized to make a distinction of that word "activity" as basis of exemption. (Colgate-Palmolive Phil., Inc. vs. Gimenez, 1 SCRA 267, 271; Ligget & Myers Tobacco Co. vs. Coll. of Int. Rev., 53 OG, 15, p. 4831; 50 Am Jur. 217.)

The assertion by respondent that the documentary stamp tax was not directly payable by petitioner but by the Philippine American General Insurance Co., and, therefore, not subject to exemption and entitled to the refund of the documentary stamp taxes does not hold water. The law, Section 222 of the National Internal Revenue Code, which provides for the imposition of stamp tax is to be payable by the person making, signing, issuing, accepting, or transferring the documents, instruments and papers to which the insurance policies belong. Ostensibly, either petitioner, who accepted the policies and who did in fact paid the documentary stamp taxes and the Philippine American General Insurance Co., who made and issued the policies, may pay the said tax.

As correctly observed by petitioner, Section 222 of the National Internal Revenue Code leaves the tax to be paid indifferently by either party (Sta. Clara Lumber Co., Inc. vs. Jose Arañas, CTA No. 502, June 12, 1959.) and under Section 2, Rev. Reg. No. 26, the insured as well as the insurer are liable for documentary stamp tax on the insurance policy. (Jose Arañas, National Internal Revenue Code of 1977 (as amended), 1978 Ed., Vol. 2, p. 366.) Considering that under the contracts of non-life insurance, it was petitioner who was required to pay for the documentary stamp taxes, the taxpayer that made payment is the one who can properly claim for the refund of the tax. (Atlas Consolidated Mining Dev. Corp. vs. Comm. of Int. Rev., CTA 3022, Sept. 30, 1980, citing Phil. Acetylene Co., Inc. vs. Comm. of Int. Rev., etc., 20 SCRA 1056; Cebu Portland Cement vs. Coll. of Int. Rev., 25 SCRA 789, 792.) It is a recognized principle in taxation that tax law concerns itself with actual facts, or what actually transpired between the parties, regardless of their designation of the transaction. In other words, in taxation, the substance and true facts of the case give way to form. (China Mutual Steam Navigation Co., Ltd. vs. Comm. of Int. Rev., CTA Case No. 2728, March 30, 1979; Comm. of Int. Rev. vs. Constantino, 31 SCRA 779, 782; Balao v. Domingo, 21 SCRA 444; Shell Co. of the Phils. Ltd. v. Fireman's Ins. Co. of Nevada, 100 Phil. 757, 764-765.) What actually happened was that petitioner paid the documentary stamp tax it sought in this proceeding to be refunded. The claim of respondent that said taxes is to be directly payable by the Philippine American General Insurance Co. is a fact which did not happen. Therefore, what is important is who paid the tax. It having been paid by petitioner, and claiming it to be erroneous, as it is a tax-exempt industry, it devolves upon it to claim its right over the documentary stamp tax which peremptorily is its own.

Consequently, we are of the opinion and so hold that petitioner is exempt from the payment of documentary stamp taxes under P.D. Nos. 1001 and 1714. The amount of ₱365,683.20 paid by petitioner as documentary stamp taxes is subject to the refund by the respondent Commissioner of Internal Revenue.

WHEREFORE, the claim by petitioner Marinduque Mining & Industrial Corporation, for the refund of the documentary stamp taxes it paid to respondent in the amount of ₱365,683.20, is hereby granted without interest.

Respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner the said amount within thirty (30) days from the date this decision becomes final.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 28, 1985.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Presiding Judge

(Dissents in separate opinion.)
ALEX Z. REYES
Associate Judge

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARINDUQUE MINING &
INDUSTRIAL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3192

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
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DISSENTING OPINION

The majority in granting the refund of an amount representing documentary stamp taxes affixed and paid on fire insurance policies has considered the underwriting on the mining concessioner's properties an "activity" within the contemplation of the provision, which "exempt from all taxes, duties, fees and charges, both national and local, directly payable by it for any work or activity, equipment, machinery, instruments, supplies, accessories, structures, buildings, lands, improvement, and/or other properties directly connected with or needed and to be used exclusively in the operation." (Sec. 6-A. PD 1001 amending RA 1828) (Underscoring supplied). My colleagues must have confused what seems feasible with what is right.

The majority's view seems more generous than candid and distressingly monochromatic, so to speak, considering that "The statutory grant is not of such a broad spectrum with open-ended features as would sire every conceivable tax assessment or burden which petitioner may proffer to attach." (Marinduque Mining & Industrial Corporation v. Commissioner of Internal Revenue, CTA Case No. 3019, March 27, 1981). That was the sense of this Court in denying a claim for a refund of an amount representing payment of 35% transaction tax on interest consequenced by the same herein petitioner-operator's borrowings, likewise based on the statutory authority now invoked. The ruling was reiterated in the Western Minolco Case (CTA No. 3011) as affirmed by the Supreme Court (L-61632, August 16, 1983, 124 SCRA 121).

Suffice it to state that if the tax relief sought on the pecuniary burdens incurred for the specific purpose of raising funds for the mining operation was deemed "remote and removed from the activities normally involved or necessarily connected with the petitioner's undertaking" much less could the petitioner in the case at bar avail of a tax exemption from the payment of documentary stamp taxes (assuming arguendo that beneficiary-petitioner is directly liable) required on the insurance policies, which transaction poses no acute concern for carrying on the operation. I would rather curtail the enjoyment of the tax exemption privilege than lend currency to an aggravated chutzpah of a flip-flop precipitous overruling of established precedents.

ALEX Z. REYES
Associate Judge