417

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5111

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 30 1997

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# DECISION

This is a judicial claim for refund of value-added input taxes allegedly paid by petitioner on its export sales during the quarterly periods covering January 1, 1992 to December 31, 1992 in the total amount of P16,566,740.93.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines. It is engaged in the mining business and as such, is a duly registered Value-Added Tax (VAT) taxpayer with respondent's Bureau, pursuant to the requirement of Section 107 of the National Internal Revenue Code, as shown by its VAT Registration No. 32-6-000632 (Exh. "C"). It is likewise a Board of Investment (BOI) registered enterprise with Certificate of Registration Nos. 79-833 (Exh. "J"), DP 88-259 (Exh. "J-1"), DP 88-359 (Exh. "J-2"), DP 90-507 (Exh. "J-3") and EP93-212 (Exh. "J-4").

On various dates, petitioner filed its corresponding quarterly VAT returns for the calendar year 1992, as follows:

| Quarter | Date Filed | Net Creditable Input Tax | Exhibits |
|---|---|---|---|
| 1st | April 20, 1992 | P 3,204,763.03 | "F & F-1" |
| 2nd | July 17, 1992 | 3,246,636.04 | "G & G-1" |
| 3rd | October 20, 1992 | 5,077,453.21 | "H & H-1" |
| 4th | January 20, 1993 | 4,610,499.62 | "I & I-1" |
| | TOTAL | P16,139,351.90 | |

On May 28, 1993, petitioner filed with respondent's Bureau an application for tax credit/refund of VAT paid for the period January 1, 1992 to June 30, 1992 in the amount of P6,815,448.22 (Exh. "D"), and on July 20, 1993 another similar application was filed by it for the period July 1, 1992 to December 31, 1992 in the amount of P9,751,292.71 (Exh. "E"), for a total amount of P16,566,740.93 for the year 1992.

To date, respondent allegedly has not acted on petitioner's applications for tax credit/refund of VAT.

Hence, this appeal filed on May 24, 1994 in accordance with Section 230 of the Tax Code and the rule established in the case of **Commissioner of Internal Revenue vs. Victorias Milling Co., Inc.** (22 SCRA 12) which states that:

> "The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. If, however, the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of said Commissioner."

Records show that on December 23, 1993, respondent issued an Authority to Issue VAT Credit/Refund in the total amount of P7,537,139.79, broken down as follows:

| | |
|---|---|
| Bureau of Internal Revenue | P5,482,734.79 |
| Bureau of Customs | 2,054,405.00 |
| Total | P7,537,139.79 |

Hence, on September 28, 1994, respondent issued Tax Credit Certificate No. SN 002637 in the amount of P5,482,734.79 representing creditable input VAT on local purchase in the name of the petitioner for the period January to December 1992 which the latter accepted (Exh. "4", pp. 66, BIR records). Respondent has sent a letter addressed to the Commissioner of the Bureau of Customs authorizing the issuance of a tax credit certificate for input VAT paid on importation for the same period in the amount of P2,054,405.00 in favor of petitioner (Exh. "3", p. 64, BIR recs.).

The above amounts of tax credit were arrived at by respondent's revenue officers on petitioner's subject application for tax credit/refund, the details of which are as follows: (Exh. "2-A", p. 36, BIR rec.)

| | On Local Purchase (BIR) | On Importation (BOC) | TOTAL |
|---|---|---|---|
| Amount claimed | P14,512,335.95 | P2,054,405.00 | P16,566,740.93 |
| Less: Disallowed | | | |
| Input Taxes | 39,977.59 | - | 39,977.59 |
| Overstatement | 440,228.41 | | 440,228.41 |
| Allowable Input Taxes | P14,032,129.93 | P2,054,405.00 | P16,086,534.93 |
| Less: Output Tax on sale to CB | 8,549,395.14 | - | 8,549,395.14 |
| Amount Creditable | P 5,482,734.79 | P2,054,405.00 | P 7,537,139.79 |

It can be gleaned from the preceding computation that out of petitioner's entire claim for refund, only the amount of P7,537,139.79 (P5,482,734.79 + P2,054,405.00) was granted. The amount of P8,549,395.14 representing petitioner's sales of gold and silver to the Central Bank of the Philippines was subjected to a 10% output VAT.

The issue confronting us is limited to:

Whether or not the sale of gold and silver to the Central Bank of the Philippines by the petitioner is subject to 10% output VAT.

We peremptorily rule in favor of the respondent in view of the numerous decisions this Court has come out with upholding respondent's purely legal position on VAT

Ruling Nos. 8-92, dated January 23, 1992, and 59-92, April 28, 1992, and Revenue Memorandum Order No. 22-92, dated May 14, 1992, which consider sales of gold to Central Bank as domestic sales and therefore not zero-rated under Section 100 of the Tax Code.

Thus, in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4794, in a Resolution, dated April 5, 1994; and as adopted in the cases of **Itogon-Suyoc Mines, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 4852, July 10, 1995; **Manila Mining Company vs. Commissioner of Internal Revenue**, CTA Case No. 4860, February 20, 1995; **Benguet Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4429, 4495, 4575, March 23, 1995; **Benguet Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4945, January 26, 1995; and **Benguet Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5007, February 14, 1996, We have ruled consistently that the retroactive application of VAT Ruling No. 8-92 will not be prejudicial to the taxpayer.

In the more recent case decided by the Court of Appeals in **Benguet Corporation vs. Commissioner of Internal Revenue, CA-G.R. No. SP-38413, May 30, 1996**, where our decision has been affirmed, it was held:

"Respondent argues in the affirmative. He contends:

xxx xxx xxx

With due respect, this Office believes the said mining companies will not be unduly prejudiced if this Office denies their claimed input tax refunds for sales of gold to the CB made during the period prior to revocation of the aforesaid rulings. Under the VAT law, 10% VAT is imposed on each stage of every taxable sale. This tax component is passed on to the buyer, as the buyer's input tax, provided, however, that the said buyer is a VAT-taxable person. The said buyer, in turn, uses this tax passed on, as his input tax credit, in paying his own output taxes (10% VAT) on his taxable sales. Thus, cost of the tax passed on accumulates upon the turnovers or stages or sales until this cost of the tax passed on ultimately rests upon the ultimate consumers. Also, under the VAT law, the seller has two options with respect to his input taxes pertaining to purchases and sales, if such sales are zero rated, viz., the seller may use and apply his input taxes in paying his 10% output taxes on his other sales which are subject to 10% VAT, or claim for input tax refund vis-a-vis his input taxes attributable to his zero rated sales, (e.g., export sales).

When the said mining companies, relying upon the aforementioned earlier BIR rulings, sold their gold to the CB at zero rate VAT, they did not fully pass on to the CB the cost of their respective input taxes. Said input taxes remained in their possessions (sic). The only repercussion of the revocation of the said earlier rulings is - they will be prevented the option of claiming the said input taxes as refund. But, they remain entitled to use the same in paying their output taxes in connection with their other sales transactions which are subject to the 10% VAT. It follows, there is no prejudice that may ensue from the retroactive application of the said revocation because what they only lose is the right to have their input taxes refunded which, in the first place and under the law, they are any way clearly not entitled to. Granting, for the sake of argument, that they have no other sales transactions subject to 10% VAT against which their input taxes may be used in payment, then, it follows, they are constituted as the final persons against which the costs of the tax passed on shall legally stop and rest, hence, in this connection, the said input taxes may already be legally converted as cost available as deduction for income tax purposes. On this score, they are also not prejudiced by the retroactive application of the said ruling

It should be noted that the pronouncement in VAT Ruling No. 008-92 regarding the sale of gold as a local sale subject to 10% VAT is but consistent with Section 100 (a) of the National Internal Revenue Code, to wit:

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 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 by VAT-registered persons shall be subject to 0%:

(1) Export sales; and

(2) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

'Export sales' means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of influence or determine the transfer of ownership or the goods so exported, or foreign currency denominated sales. 'Foreign currency denominated sales' means sales to non-residents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines.

It is clear from the above provision that the sales recognized by the law as zero-rated -re the export sales and thos- made to persons or entities exempt under special laws international agreements to w- -ch the Philippines is a signat- . Petitioner's sales of gold the Central Bank falls -ther of these two categories under -o-rated sales." (Pp. 6-10, or-ment.)

The argument advanced by the respondent clearly indicates a situation wherein no prejudice would be suffered by the taxpayer, petitioner in the case at bar. He outlines the various modes wherein the questioned VAT may be recovered, the worst scenario would be when they are constituted as the persons against which the costs of the tax passed on shall legally stop and rest. But the taxpayer in said case still has a last resort - the input taxes may be legally converted as cost available as deduction for income tax purposes. Hence, they are also not prejudiced by the retroactive application of the ruling.

We note that in resolving the case against the herein petitioner, the Court of Tax Appeals cited the ruling in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4794, prom. 05 April 1994) to effect that the retroactive application or VAT Ruling Nos. 8-92 and 59-92 may not necessarily be proscribed by Section 246 of the Tax Code, especially so where there is no showing of actual and imminent prejudice to the taxpayer as a result thereof (p. 8 of the Decision). So far, there appears to be no reversal of the ruling in said case.

**WHEREFORE**, in view of all the foregoing, the petition is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**AMANCIO Q. SAGA**
Associate Judge

# CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals