REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NOS. 4474 and 4506

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 03 1998

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DECISION

These cases involve claims for refund/tax credit in the total amount of P5,639,591.29 representing excess VAT input tax payments allegedly paid by petitioner for the second and third quarters of 1988.

The factual backdrop of the case are as follows:

Petitioner is a domestic corporation that principally deals with the mining, milling, smelting and overall processing of gold and silver for eventual sale to Central Bank of the Philippines (CBP). It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, evidenced by VAT Registration Certificate No. 32-6-000632 (Exh. "C"). On April 8, 1988, petitioner filed an "application for zero rate" on its sale of mineral products to CBP (Annex "B" of Petition for Review), which was answered by respondent through a letter dated October 10, 1988 in this wise:

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> "In connection with your application for zero-rate filed on April 8, 1988, please be informed that under Sec. 2 of E.O. 581 as amended by E.O. 587, gold sold to the Central Bank is considered an export sale which under Section 100 (a) (1) of the NIRC, as amended by E.O. 273, is subject to zero-rate if such sale is made by a VAT-registered person.
>
> There is no need to file an application for zero rate inasmuch as your status as a VAT registrant automatically subjects your sale to Central Bank to zero-rate. You are, however, still required to file a quarterly return within 20 days following the end of each quarter specifically prescribed for your company."

On July 20, 1988, petitioner filed its VAT return for the second quarter of 1988 which reflected zero-rated sales amounting to P18,155,117.81 and a net creditable input tax of P4,657,175.25 (Exh. "Q"). This return was amended on February 22, 1991, this time reflecting zero-rated sales in the amount of P18,087,265.07 and a net creditable input tax of P4,245,992.28.

For the third quarter of 1988, petitioner likewise filed its VAT return which showed zero-rated sales in the sum of P25,341,840.62 and a net creditable input tax of P7,328,149.87 (Exh. "S"). This return was also amended on February 22, 1991 reflecting zero-rated sales in the amount of P25,285,606.59 and a net creditable input tax of P6,706,341.37 (Exh. "T").

Subsequently, on May 17, 1990 and September 5, 1990, petitioner filed applications for tax credit/refund of

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Value-Added Tax Paid for the second and third quarters of 1988, respectively (Exhs. "K" and "L") on the basis of Sec. 106 (b) of the Tax Code, which provides:

> (b) Zero-rated or effectively zero-rated sales.-Any person, except those covered by paragraph (a) x x x whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax."

This application was acted upon favorably by the Revenue Officers who conducted the examination through a memorandum-letter addressed to the Commissioner dated March 11, 1991. In said memo-letter, the Revenue Officers concerned recommended that the net amount of P6,928,701.12 covering petitioner's application for tax credit/refund for the four quarters of 1988 be refunded to herein petitioner in the form of tax credit certificates (Exh. "A"). On August 13, 1992, however, this memorandum-letter recommending a tax credit of P6,928,701.12 to petitioner was amended and the claim for VAT credit was denied. Consequently, petitioner was even assessed of deficiency taxes amounting to P734,808.19 (Exh. "B"). The amendment was based on VAT Ruling No. 008-92 dated January 23, 1992, RMO No. 22-92 dated May

14, 1992 and Inter-Office Memorandum issued by the Commissioner dated May 25, 1992. VAT Ruling No. 008-92, considered sales of gold to the CB as local sales and not as export sales and, therefore, subject to a 10% VAT rate. The applicability of said ruling was made retroactive to January 1, 1988.

Petitioner then elevated these petitions before Us on July 20, 1990 (CTA Case No. 4474-2nd quarter of 1988) and October 18, 1990 (CTA Case No. 4506-3rd quarter of 1988) to toll the running of the two-year prescriptive period. Since both cases involve the same parties and same questions of law and fact, petitioner's Motion to Consolidate these cases was granted on August 30, 1993 (p. 167, CTA Records).

Mr. Ricardo Santos, a Revenue Enforcement Officer of the Bureau of Internal Revenue who was one of those who conducted the examination of petitioner's application for tax credit/refund, testified during the hearing of August 30, 1993 that petitioner has submitted all the required documents necessary to support its claim for refund for the period January to December 1988, the reason why they recommended the issuance of a tax credit certificate in its favor with certain adjustments. But because of the issuance of BIR VAT Ruling No. 8-92 and RMO No. 22-92 subjecting sales of gold to CB to 10% VAT and was even

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given retroactive effect, they were constrained to revoke its recommendation for tax credit and issue an assessment instead.

The crux of the controversy, therefore, is purely legal, that is, whether sales of gold to the Central Bank are to be considered as export sales which under Section 100 of the Tax Code are zero-rated or as local sales subject to 10% VAT pursuant to VAT Ruling No. 8-92.

These cases were originally submitted for decision on June 13, 1996 but in a resolution dated July 19, 1996, this Court resolved to hold in abeyance the decision in these cases pending adjudication of a similar issue by the Court of Appeals in cases pending before the latter court. Now that the Court of Appeals has promulgated decisions touching on the very heart of the issue confronting Us, We have decided to resolve said issue in the light of these decisions.

It is worthy to note that during the periods covered in these cases (April to September, 1988) up to January 23, 1992 when VAT Ruling No. 008-92 was issued, sales of gold to Central Bank were treated as export sales which under Section 100 of the Tax Code are zero-rated. Hence, pursuant to Section 106(a) of the Tax Code, the input taxes attributed to such sales of gold can be refunded. Said provision was further amplified by the following

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rulings and circulars offered in evidence by herein petitioner:

a. BIR letter dated October 10, 1988 addressed to petitioner informing the latter that gold sold to the Central Bank is considered an export sale subject to zero-rate and that there is no need to file an application for zero-rate inasmuch as its status as a VAT registrant automatically subjects said sale to CB to zero rate (Exh. D);

b. VAT Ruling No. 100-000-00-378-88 dated August 23, 1988 which states that the sale of gold to the Central Bank is considered as an export sale subject to zero-rating (Exh. E);

c. Revenue Memorandum Circular No. 59-88 dated December 14, 1988 which states that the sale of gold to the Central Bank, if made by a VAT-registered firm (such as petitioner), is zero-rated (Exh. F);

d. CB Circular No. 960 (Sec. 169) which states that gold producers shall qualify as export-oriented firms even if their entire output is sold to the Central Bank and CB Circular No. 1301 which states that all sales of gold to the CB are considered constructive exports;

e. VAT Ruling No. 239-89 dated September 20, 1989 which states that sale of gold to Central Bank is zero-rated; and

f. Department of Justice Opinion No. 47 Series of 1992 dated April 14, 1992 which states that sales of gold to the Central Bank are entitled to zero rate under Section 100(a) (2) of the Tax Code.

However, due to the issuance of VAT Ruling 8-92 which considered sales of gold to the CB as local sales subject to the 10% VAT rate and was given retroactive effect by VAT Ruling No. 59-92, the treatment previously accorded to petitioner as a zero-rated export seller was changed.

In the case of Atlas Consolidated Mining and Development Corporation versus Court of Tax Appeals and Commissioner of Internal Revenue, CA-G.R. SP No. 34152, promulgated last February 6, 1998, the Court of Appeals said:

> In equipoise with the Central Bank's policy of conserving gold (Section 162, CB Circular No. 960), certain gold producers are required to sell their entire gold production to the Central Bank (Section 171, CB Circular 960). Moreover, no person shall export or bring out, or attempt to export or bring out of the Philippines, gold and/or gold-bearing materials, in any shape, form and quantity without prior approval from the CB Export Department. (Section 107, CB Circular No. 1318) Prescinding from the aforesaid policy, gold producers are given incentives, such as considering their sales to the Central Bank as "exports".
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> According to settled jurisprudence, circulars of the Central Bank are neither statute nor law, but being issued for the implementation of the law authorizing its issuance, it has the force and effect of law (People vs. Que Po Lay, 94 Phil. 640). All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction with it, but conform to the standards that the law prescribes (United States vs. Tupasi Molina, 29 Phil. 119). A su converso should the regulation conflict with the law, the validity of the regulation cannot be sustained (Director of Forestry v. Munoz, 23

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SCRA 1183, Hijo Plantation, Inc. v. Central Bank, 164 SCRA 194).

The Department of Justice, in Opinion No. 47, S. 1992 (dated April 14, 1992) expressed the view that:

> "x x x With regard to sales of gold to the Central Bank, existing jurisprudence recognizes that Central Bank Circulars issued for the implementation of the law authorizing its issuance [have] the force and effect of law (People vs. Que Po Lay, 94 Phil. 640), and therefore C.B. Circulars [sic] Nos. 960 and 1301 can be recognized as special laws within the ambit of Section 100(a)(2) of the Tax Code." (Underscoring supplied) (pages 112-113 of the CTA Record)

Based on the foregoing, the conclusion is inevitable that VAT Ruling No. 008-92 (dated January 23, 1992) is bereft of legal basis in removing the VAT zero-rating treatment previously recognized on sale of gold to the Central Bank, including constructive export sales to BOI-registered enterprises.

x x x

Insofar as the sales of gold to the Central Bank is concerned, the following official acts showed that the BIR had consistently considered the same as effectively zero-rated:

a. The grant of petitioner's application for zero-rating (Annex "A", Joint Stipulation of Facts; page 56 of the CTA Records);

b. VAT Ruling No. 100-000-000-378-88 (dated August 23, 1988) which states that the sale of gold to the Central Bank is considered as an export sale subject to

> zero-rating (Annex "P", Joint Stipulation of Facts; page 90 of the CTA Records); and
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> c. Revenue Memorandum Circular No. 59-88 (dated December 14, 1988) which states that the sale of gold to the Central Bank if made by a VAT-registered firm (such as petitioner) is zero-rated (Annex "T", Joint Stipulation of Facts; page 96 of the CTA Records).
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> Clearly, the respondent court improperly deviated from its former position notwithstanding its legal bases. Ostensibly, the respondent opted to apply certain provisions of the law which buttressed its present position while being impervious of the salient provisions that would yield a contrary conclusion. Consequently, respondent has applied Section 100(a) in a manner which negates fealty to axiom "Interpretare et concordare leges legibus, est optimus interpretandt modus" (The best method of interpretation is that which makes laws consistent with other laws).
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> Prescinding from the foregoing, VAT Ruling No. 008-92 (dated January 23, 1992) is devoid of legal bases in imposing the 10% VAT on petitioner's sales of gold to the Central Bank.

As to whether VAT Ruling No. 059-92 dated April 20, 1992 which made retroactive to January 1, 1988 (date of effectivity of the VAT law), is valid which would in effect subject petitioner to 10% VAT, We rule in the negative.

In Manila Mining Corporation versus Commissioner of Internal Revenue, CA G.R. SP No. 38287, dated June 5, 1997 the Court of Appeals ruled that:

> "The applicable law is Section 246 of the National Internal Revenue Code which provides:

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> "Sec. 246.-*Non-retroactivity of rulings*.- Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materiality different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith."

The law is clear. VAT Ruling 008-92 issued on January 23, 1992 and Revenue Memorandum Order No. 22-92 cannot be applied retroactively to petitioner's sales to the Central Bank from July 1, 1990 to December 31, 1990.

In the recent case of *Commissioner of Internal Revenue vs. Court of Appeals*, et al., G.R. No. 117982, February 6, 1997, the Supreme Court citing the cases of Commissioner of Internal Revenue v. Telefunken Semiconductor Philippines, Inc., G.R. No. 103915, 23 October 1995, 249 SCRA 401; Bank of America v. CA, G.R. No. 103092, 21 July 1994, 234 SCRA 302; Commissioner of Internal Revenue v. CTA,

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> No. L-44007, 20 March 1991, 195 SCRA 444; Commissioner of Internal Revenue v. Mega General Merchandising Corp., G.R. No. 69136, 30 September 1988, 166 SCRA 166; Commissioner of Internal Revenue v. Burroughs, G.R. No. 66653, 19 June 1986, 142 SCRA 324; ABS-CBN v. CTA, G.R. No. 52306, 12 October 1981, 108 SCRA 142, in no uncertain terms, pronounced, " well-entrenched is the rule that *rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.*"
>
> Revenue Memorandum Circular No. 59-88, dated December 14, 1988, and BIR Ruling No. 036-90, dated February 14, 1990 considered sales of gold by a VAT registered firm to the Central Bank as export sales subject to zero rate pursuant to E.O. 581 and Section 1690 of CB Circular No. 960.
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> The retroactive application of VAT Ruling No. 008-92 deprived petitioner not only of its claim for refund but worse, made petitioner liable for deficiency VAT in the amount of P8,012,213.47.

Then, in the recently decided cases of **Atlas Consolidated Mining and Development Corporation versus Court of Tax Appeals and Commissioner of Internal Revenue**, hereinbefore cited, and **Benguet Corporation versus Commissioner of Internal Revenue**, CA-G.R. SP Nos. 37205,38958 and 39435, the Court of Appeals reiterated its position that VAT Ruling No. 008-92 cannot be given retroactive application. The Atlas case concluded that VAT Ruling No. 008-92, in imposing 10% VAT on sales of gold to the Central Bank lacks legal basis, hence, of no

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effect. Furthermore, said case treated VAT Ruling No. 059-92 (dated April 20, 1992) which applies retroactively to January 1, 1988 VAT Ruling No. 008-92 (dated January 23, 1992) as contrary to law.

Finally, in the aforementioned Benguet case promulgated last July 10, 1998, the Court of Appeals said:

> "The applicable provision of law is Section 246 of the NIRC quoted earlier. Under this provision, a ruling cannot be given retroactive effect if such application will be "prejudicial to the taxpayers". So, the important query is: does the retroactive application of VAT Ruling No. 008-92 cause undue prejudice to the petitioner?
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> The term "prejudice" means "to injure by some action or judgment; to damage" (Sibal, Philippine Legal Encyclopedia (1986), p. 750). Patently, petitioner will suffer substantial prejudice and injury if VAT Ruling No. 008-92 applied retroactively.
>
> Previous to the issuance of VAT Ruling No. 008-92 on 23 January 1992, sales of gold to the CB were deemed export sales subject to a 0% rate of VAT. However, upon the issuance of VAT Ruling 008-92, said sales of gold to the CB were deemed local sales and imposed a 10% VAT rate. What caused injury and damage to petitioner is the issuance of VAT Ruling No. 59-92 providing for a retroactive application of VAT Ruling No. 008-92 to the year 1988. The imposition of a higher VAT rate on petitioner's sales of gold to the CB (10% VAT rate instead of 0%) in effect reduced petitioner's income. This must be so because when petitioner's claims for tax credits were denied citing VAT Ruling No. 008-92 and VAT Ruling 59-

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> 92, petitioner suffered financial damage equivalent to the sum of the disapproved claims. Had petitioner known that such sales were deemed local sales and subject to the 10% VAT rate (which rate was not the prevailing rate in 1988) it would have (as it was within its rights to do so) passed on the cost of the input taxes (representing actual payments, costs or expenses in the purchase of goods and services) to the CB. Petitioner did not do that since it relied on this VAT rulings then in effect that the transactions in question were deemed export sales and subject to the 0% VAT rate. The reduction in income is the injury and damage to petitioner which is well within the meaning of the provision herein cited."
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> "Pertinently, it may be observed that the amendment of the VAT Law entitled "The New Expanded VAT Law" (Republic Act No. 7716) is revealing. Section 2 thereof amends Section 100 of the NIRC. The amended version of Section 100 of the NIRC, specifically Section 100 (a) (2) (A) (iv), expressly provides that "Sale of gold to the Bangko Sentral ng Pilipinas (BSP)" is an export sale subject to the 0% VAT rate."

Having settled the legal issue involved in the instant case, We now determine the amount to which petitioner is entitled.

In support of its claim, petitioner presented, among others, invoices and official receipts evidencing its input tax payments for the year 1988 (Exhibits "BB-1 " to "BB-4,883").

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After a careful scrutiny of the evidence submitted by petitioner plus the positive recommendation of the Revenue Examiner in the memorandum-letter dated March 11,1991, We find in favor of the petitioner. The Court however noted that petitioner included in its application for tax credit/refund of value-added tax paid for the second quarter of 1988, the tax paid on imported/locally purchased capital equipment covering the period January 1 to March 31, 1988 amounting to P579,618.50. Thus, We are constrained to reduce petitioner's claim by ₱579,618.50 since said amount involves input tax payments made during the first quarter of 1988 which is not within the periods involved in these cases for refund.

WHEREFORE, in the light of all the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or, in the alternative, **ISSUE** a tax credit certificate in favor of petitioner the amount of P5,059,972.79 representing excess input tax payments during the second and third quarters of 1988.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

RAMON O. DE VEYRA
Associate 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