REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARINDUQUE MINING AND
INDUSTRIAL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3019

EFREN I. PLANA, COMMISSIONER
OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

3/27/81

D E C I S I O N

This is an appeal from the denial of the refund of an amount of ₱1,335,631.80 representing the 35% transaction tax paid under Section 210(b) of the National Internal Revenue Code of 1977.

The Marinduque Mining & Industrial Corporation, petitioner, is a domestic corporation organized and existing under Philippine laws engaged in mining operations which has such principal products as nickel, copper, gold and silver concentrates and cement. In an Operating Contract with the Philippine Government pursuant to the provisions of Republic Act No. 1828, as amended by Republic Act Nos. 2077 and 4167, otherwise known as the "Nickel Law", it has undertaken the exploration, development, exploitation and operation of Parcel 11 of the Surigao Mineral Reservation in the Province of Surigao del Norte, together with the right to extract, process, utilize and dispose of the minerals, mineral and metal products, by products, residues and other products that may be extracted or produced or may result from such operation; furnishing at its own cost and expense all materials, labor, equipment, plants and other installations and processes that may be required for carrying on the operations authorized or necessary or incident thereto, and all operations, processes, work or acts shall be carried out at its own cost and expense. Among the considerations, it shall be entitled to the additional privilege specifically provided in Article VI(5) of the Operating Contract plucked almost verbatim from the provision of Section 6(1) of R.A. No. 1828, which, insofar as pertinent, reads:

> "That the operator shall, from the effective date of the contract of operation 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, improvements and/or other properties directly connected with or needed and to be 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: xxx xxx xxx."

Likewise, Section 53 of Presidential Decree No. 463, entitled, "The Mineral Resources Development

Decree of 1974" is invoked, to wit:

> "Tax exemptions. - Machineries, equipment, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals and transportation and communication facilities imported by and for the use of new mines and old mines which resume operation, when certified as such by the Secretary upon recommendation of the Director, are exempt from the payment of customs duties and all taxes except income tax for a period starting from the exploration and ending five years from the first date of actual commercial production of saleable mineral products: Provided, That such articles are not locally available in reasonable quantity, quality and price and are necessary or incidental in the proper operation of the mines."

Growing out and on the basis of the foregoing provisions, petitioner seeks to enforce its claim for the refund of an amount representing payments of 35% transaction tax based on the gross amount of interest on borrowings from financial institutions during the period from July 15, 1977 to January 27, 1978, imposed under Section 210(b) of the National Internal Revenue Code of 1977, insofar as pertinent, quoted:

> "Commercial paper transactions. - There shall be levied, assessed, collected and paid on every commercial paper issued in the primary market as principal instruments, a transaction tax equivalent to thirty-five per cent (35%) based on the gross amount of interest thereto as defined hereunder, which shall be paid by the borrower/issuer: xxx xxx xxx.

> "The transaction tax imposed in this section shall be a final tax to be paid by the borrower and shall be allowed as a deductible item for purposes of computing the borrower's taxable income."

The question for decision is whether petitioner is exempt from the payment of the transaction tax on interests consequenced by its borrowings, which respondent casts aside as not among those legal entitlements contemplated in petitioner's tax exemption privilege under the provisions of the Operating Contract, Republic Act No. 1828 and Presidential Decree 463.

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. Of equal significance although far less noticed is Section 3(2) of R.A. No. 1828 or Article VI(2) of the Operating Contract which establishes the metes and bounds of the benefits to be availed under the privilege expressed in generality, under Section 6, supra, thus,

> "Section 3(2). - Exemption from the laws and regulations relating to: (a) importation of machinery, equipment, accessories, spare parts, and/or supplies and materials necessary for or in connection with said operation or processing of minerals; (b) constructions, installation and operation of power plants, including importation of machinery and equipment, accessories, spare parts and/or operating supplies and materials, should the National Power Corporation fail to supply within

> reasonable period and at reasonable cost the power needed in the operation; (c) exportation of such machinery and equipment which were imported solely for construction and installation purposes in connection with the aforesaid operation and processing and which are no longer needed in the operation;
> xxx xxx xxx"

Section 6, supra, cannot be naively viewed as an absolute warrant of exemption but finds confinement to the kind of articles and facilities intended to be used, likewise, compatibility with the activity peculiar and appropriate in the project being undertaken, e.g., importation, construction, installation, operation and exportation. It is a principle of statutory construction that general terms may be restricted by specific words, with the result that the general language will be limited by the specific language which indicate the statute's object and purpose (Statutory Construction by Crawford, 1940 ed. pp. 324-325), and, the particular clauses and phrases of the statute should not be taken as detached and isolated expression but the whole and every part thereof must be considered in fixing the meaning of its parts. In fact every statute should receive such construction as will make it harmonize with the pre-existing body of laws. (Commissioner of Customs vs. Esso Standard Eastern, Inc., L-28329, Aug. 7, 1975, 66 SCRA 120).

There must be reasons of substantial nature for such limitations and it is for us to give effect as expressed. The fiscal stakes in terms of revenue foregone are considerable, unless carefully controlled and restrained the undertaking might as well be deemed solely for the benefit and convenience of the petitioner-operator. The broad grant of tax exemption benefits is not necessarily to be given a literal meaning. "In construing the act it is our duty to seek the real intent of the legislature, even though by so doing we may limit the literal meaning of the broad language used." (Greenwich Trust Co. vs. Tyson, 129 Conn. 211, 222, 27 A. 2d 166, 172).

The gross amount of interest upon which the transaction tax is imposed under Section 210(b), supra, is remote and removed from the activities normally involved or necessarily connected with the undertaking. It never could have been supposed that the tax relief did apply or was designed to apply to such pecuniary burdens which petitioner may incur in fund raising, least expected of one supposedly "fully qualified as to organization, finances, resources, experience and technical competence" (Sec. 2, R.A. 1828) in undertaking the nickel project for the Philippine government.

Exemption is never presumed. Especially when it is considered that for the Philippine government, "the exception contained in the tax statutes must be strictly construed against the one claiming the exemption." (Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Commissioner of Internal Revenue vs. Guerrero, L-20942, September 22, 1967, 21 SCRA 180; Republic Flour Mills, Inc., vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520) because the law "does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted" (Reagan vs. Commissioner of Internal Revenue, L-26379, December 27, 1969, 30 SCRA 968; Ohio Life Insurance & Trust Co., vs. Debolt, 60 Howard 416; Commissioner of Internal Revenue vs. P. J. Keiner Co., Ltd. L-24754, July 18, 1975, 65 SCRA 153), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot by ambiguous language be deprived of the highest attribute of sovereignty. (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492 499).

Nor could petitioner so obssessed with prehensile ability to cling to exemption fall back and take refuge in Section 53 of P.D. No. 463, supra. It is hardly necessary to observe that the provision deals centrally on the nature of the articles and facilities to be imported, which are determinative of the sense and coverage of the grant. The impositions upon which the privilege of petitioner have been tacked are clearly discernible in such levies partaking the attributes of a tax or impost on importations. The reason is plain. As characterized in an analogous case, "The government has conceded the privilege of exemption to these items because the same may not be economically procurable in terms of price, and quality in the Philippines" (Commissioner of Internal Revenue vs. P.J. Keiner, Co., supra). To assure, however, that the privilege is not abused or circumvented, the importation thereof must be certified by the Secretary of Agriculture upon recommendation of the Director of Mines. No other conclusion can be drawn from the language of the provision as would adequately describe the affiliating circumstances for the enjoyment of the privilege. Thus, in cases similarly conceived and claimed as broad and comprehensive grants of tax exemption privilege, the Supreme Court has consistently taken the view that the liability for the payment of taxes subsists unless the privilege is expressed in clear and anambiguous terms. Exemption from the common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum v. Llanes, 49 Phil 466; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Collector of Internal Revenue vs. Manila Jockey Club, Inc. L-3755, March 23, 1956, 98 Phil 676; Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, 64 SCRA 563). We are not to confuse about what seems feasible with about what is right.

The foregoing suffices for the dismissal of the petition.

Accordingly, we need not and do not think it necessary to discuss further the nature of the transaction tax more than to say that the incipient scheme in the issuance of Letter of Instructions No. 340 on November 24, 1975 (O.G. Dec. 15, 1975), i.e., to achieve operational simplicity and effective administration in capturing the interest-income "windfall" from money market operations as a new source of revenue, has lost none of its animating principle in parturition of amendatory Presidential Decree No. 1154, now Section 210(b) of the Tax Code.

The tax thus imposed is actually a tax on interest earnings of the lenders or placers who are actually the taxpayers in whose income is imposed. Thus, "the borrower withholds the tax of 35% from the interest he would have to pay the lender so that he (borrower) can pay the 35% of the interest to the Government." (President Marcos, Times Journal, June 17, 1977 cited in Respondent's Memorandum, p. 6). Petitioner's contention that LOI No. 340 was not carried into law and therefore not a law is a profligacy of inference and Non Sequitor. We are unlikely impressed. It falls flatly in conflict with law. Instructions of the President are part of the law of the land (Art. XVII, Sec. 3(2), Philippine Constitution) and their non-observance shall not be excused by disuse (Art. 7, Civil Code of the Philippines). Suffice it to state that the broad consensus of fiscal and monetary authorities is that "even if nominally, the borrower is made to pay the tax, actually, the tax is on the interest earning of the immediate and all prior lenders/placers of the money." These are no mere splendiferous fustians but respectable opinions which make us hesitate to correct.

We therefore uphold the correctness of the construction given the statutory grant as well as the soundness of the ruling with respect to the nature and purpose of the transaction tax imposed under Section 210(b), supra, by respondent Commissioner of Internal Revenue.

WHEREFORE, the petition for review is dismissed with cost to petitioner.

SO ORDERED.

Quezon City, March 27, 1981.

ALEX Z. REYES
Associate Judge

I CONCUR:

AMANTE FILLER
Presiding Judge

Did not take part

CONSTANTE C. ROAQUIN
Associate Judge