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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARINDUQUE MINING & INDUSTRIAL
CORPORATION,
Petitioner,

- versus - C.T.A. CASES NOS. 2518 & 2457

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

7/1/87

D E C I S I O N

These are twin cases involving claims for judicial refunds of petitioner in the amounts of ₱1,751.00 (CTA Case No. 2518) and ₱2,777.00 (CTA Case No. 2457), as erroneously paid compensation taxes to respondent Commissioner of Internal Revenue during the years 1971, and 1970 and 1971, respectively.

It appears from the evidence and records of these two cases that petitioner and the Government have, on July 3, 1968, entered into an operating contract (Exh. A, pp. 7-21, CTA rec.), for the petitioner to develop, exploit, utilize and process, as Operator, the mineral deposits of Parcel II of the Surigao Mineral Reservation.

Under the said operating contract, it was provided in paragraph VI thereof, labeled "ADDITIONAL RIGHTS

AND PRIVILEGES OF OPERATOR" (pp. 15-16, CTA rec.), that:

> "The operator shall also enjoy the following rights and privileges:
>
> (1) xxx xxx xxx
>
> (2) Exemption from laws and regulations relating to: (a) importations of machinery, equipment, accessories, spare parts, and/or supplies and materials necessary for or in connection with said operation or processing of minerals; (b) construction, 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 a 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;
>
> (3) xxx xxx xxx
>
> (4) xxx xxx xxx
>
> (5) Exemption, from the date of effectivity of both the Memorandum of Agreement and this Operating Contract up to and including the fifth year after commencement of actual production, 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 R.A. 1828, as amended, and except those fees and charges that are imposed for work or services actually rendered to the Operator."

For the importation of equipment and spare parts abroad in 1971 (CTA Case No. 2518) and so also in 1970 and 1971 (CTA Case No. 2457), which equipment and spare parts were used as intended, under petitioner and the Government's operating contract, and which were direly needed in the Surigao Nickel Project, and petitioner not being able to wait for the Government's endorsement for their tax exempt release from the customs, petitioner released the importation and shipments by paying, among others, the compensating taxes thereon which is here in question, in the said amounts of ₱1,751.00 (CTA Case No. 2518) and ₱2,777.00 (CTA Case No. 2457), respectively.

Consequently, on October 19, 1971, petitioner filed its claim for refund of the total amount of ₱1,751.00 as compensating tax erroneously paid on the aforesaid equipment it imported for its use in CTA Case No. 2518 (Exh. B, pp. 22-24, CTA Case No. 2518 rec.); and on

May 31, 1971, petitioner filed its claim for refund of the total sum of ₱2,777.00 as compensating tax it erroneously paid on aforesaid equipment it imported for its use in CTA Case No. 2457. (Exh. B. pp. 5-6, CTA Case No. 2457 rec.)

No action having been forthcoming on the aforesaid claims for refund, petitioner took these two cases before Us by way of "Petitions for Review" or judicial claims for refund.

The only issue in these two (2) cases is whether or not petitioner is entitled to the refund of the sums of ₱1,751.00 and ₱2,777.00, or a grand total of ₱4,528.00 as erroneously paid compensating tax.

The Operating Contract (Exh. A), under which petitioner predicate its claims for refund, provides that the importations made of equipment and shipments of spare parts from abroad and which were used in the pursuit of the so-called Surigao Nickel Project are exempt from taxes. This provision in said contract is very clear and this was what was intended by the parties and our judicial illucidation in this respect is not necessary. Petitioner, under said paragraph VI of the

Operating Contract, is exempt from the payment of all taxes, duties, fees and charges payable by it, among others, on any imported equipment, machinery, materials, instruments, supplies and accessories used in the Surigao Nickel Project during the years 1970 and 1971 in question. The payments of the compensating taxes made by petitioner on these imported equipment and spare parts in the amounts of ₱1,751.00 (CTA Case No. 2518) and ₱2,777.00 (CTA Case No. 2457) is, therefore, erroneous since these imported equipment and spare parts are exempt from tax and said amounts of compensating taxes are legally refundable to petitioner.

WHEREFORE, the respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Marinduque Mining & Industrial Corporation the total sum of ₱4,528.00 as compensating taxes paid in the years 1970 and 1971.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 1, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge