REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

SEMIRARA MINING CORPORATION,
Respondent.

CTA EB No. 793
(CTA Case Nos. 7822 & 7849)

Present:

Acosta, *PJ,*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated: APR 2 3 2012

x- x

DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* are the Decision and Resolution, dated March 28, 2011 and June 3, 2011, respectively, of the First Division granting herein respondent's claim for refund of erroneously paid final Value-Added Tax (VAT) withheld by the National Power Corporation, as follows:

> "WHEREFORE, premises considered, the instant Petitions for Review are hereby GRANTED. Accordingly, respondent is hereby DIRECTED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the amount of P77,253,245.39, representing the erroneously paid final VAT withheld by the National Power Corporation and remitted to the Bureau of Internal Revenue in connection with its sales of coal for the period covering July 1, 2006 to December 31, 2006."[1]

---

[1] *Rollo*, C.T.A. EB Case No. 793, p. 38.

The Facts

Petitioner is the duly appointed Commissioner of Internal Revenue authorized to determine and approve applications for refund or issuance of TCC. Respondent Semirara Mining Corporation (SMC), on the other hand, is a duly organized and existing domestic corporation, registered with the BIR as a non-VAT enterprise engaged in the coal mining business.[2]

As a coal mine operator, SMC sells its coal production to various customers, among which is the National Power Corporation (NPC), a government-owned and controlled corporation, in accordance with the duly executed Coal Supply Agreement dated May 19, 1995.[3]

Respondent has been selling coal to NPC for years without paying VAT pursuant to the exemption granted under Section 16 of PD No. 972.[4] However, after Republic Act (RA) No. 9337 became effective on November 1, 2005, the NPC started to withhold a tax of five percent (5%) representing the final withholding VAT on coal billings of respondent pursuant to Section 114(c) of RA No. 9337, on the belief that the sale of coal by petitioner was no longer exempt from VAT.[5]

In view thereof, respondent requested for a BIR pronouncement sustaining its position that its sale of coal to NPC was still exempt from VAT, which request was granted by the BIR through BIR Ruling NO. 006-2007.[6]

Consequently, on May 21, 2007, January 21, 2008, and January 29, 2008, respondent filed letters with supporting documents requesting for a refund or the

---

[2] *Rollo*, pp. 13-14.
[3] *Rollo*, p. 14.
[4] *Rollo*, p. 15.
[5] *Rollo*, p. 16.
[6] *Ibid.*

issuance of a TCC. Due to petitioner's inaction, respondent filed on August 8 and November 10, 2008 its petitions for review before the CTA Division.[7]

The CTA Division ruled in favor of respondent herein, affirming respondent's exemption from VAT pursuant to PD No. 972, and granting the claim for refund/issuance of tax credit certificate.

Hence, this petition for review.

Issues

Petitioner raises the following issues for resolution:

I. Whether or not respondent is entitled to a tax refund in the amount of P77,253,245.39 alleged to have been erroneously withheld by NPC for the period July 1, 2006 to December 30, 2006.

II. Whether or not the sale or importation of coal and natural gas, in whatever form or state, is still exempted from VAT in view of the provisions of Republic Act No. 9337 amending certain provisions of the Tax Code (RA No. 8424).

III. Whether or not BIR Ruling No. 006-2007 is erroneous, and if it is erroneous whether the government is estopped by such error.

Ruling of the Court

The petition has no merit. Petitioner's appeal hinges on whether respondent's sale of coal to NPC is still exempt from VAT despite the provisions of RA No. 9337. Petitioner argues that the amendments under RA No. 9337 effectively removed respondent's exemption from VAT.

Considering that petitioner's arguments are merely a rehash of its previous arguments already raised before, discussed and resolved by the Court in Division, this Court finds no reason to disturb such findings. As noted by the Court in Division, the

[7] *Rollo*, pp. 17-18.

issue in this case is not a novel one. Thus, we reiterate the pertinent portions of the assailed Decision, as follows:

> "Verily, there is no indication that RA 9337 repealed PD No. 972 or any section or paragraph thereof, whether express or implied. In a myriad of cases, the Highest Tribunal ruled that a special law – such as PD No. 972 – cannot be repealed, amended or altered by a subsequent general law by mere implication. If the intent to repeal is not clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act. The legislature is presumed to know the existing laws; if it intended a repeal of the earlier law, it should have so expressed that intention in the subsequent statute. Thus, a statute will not be deemed to have been impliedly repealed by another enacted subsequent thereto unless there is a showing that a plain, unavoidable and irreconcilable repugnancy exists between the two. Absent an express repeal, as in this case, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws. An express repeal, is one wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed. Absent this specific requirement, an express repeal may not be presumed. Further, well-entrenched is the rule that an implied repeal is disfavored. The apparently conflicting provisions of a law or two laws should be harmonized as much as possible, so that each shall be effective. For a law to operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act.
>
> There being no plain and irreconcilable repugnancy between the relevant provisions of the pertinent laws and considering that the repealing clause of R.A. No. 9337, specifically Section 24 thereof did not expressly include P.D. 972 in its enumeration of repealed laws or provisions, it is plain that the latter has not been repealed by R.A. No. 9337 and petitioner may still invoke in its favor VAT exemption under the COC.
>
> Additionally, Section 109(k) of RA 9337 provides that transactions which are exempt under special laws are also exempt from VAT, thus:
>
>> 'Sec. 109. *Exempt Transactions*. – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>>
>> xxx
>>
>> (k) Transactions which are exempt under international agreement to which the Philippines is a signatory or *under special laws*, except those under Presidential Decree No. 529. (Emphasis supplied)"

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

There being no implied or express repeal of the exemptions under PD No. 972, there is no reason to discuss the additional assigned errors.

WHEREFORE, premises considered, the instant Petition for Review is hereby DISMISSED for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(on wellness leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(on wellness leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(on wellness leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice