REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5007

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 14 1996

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DECISION

This is a judicial claim for refund of value-added input taxes allegedly paid by petitioner during the periods August 1 to October 30, 1991 and November 1, 1991 to January 31, 1992 in the total amount of P83,881,627.04.

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the mining business which includes the exploration, development and operation of mining properties for purposes of commercial production and the marketing of marketable mine products produced by it. It is a VAT-registered entity with VAT Registration No. 31-9-000027 (see Annex A, p. 6, CTA records) and pursuant to Section 100 of the Tax Code, petitioner applied for zerorating on its sales of mine products (Annex B, p. 7, CTA records) which was approved on May 4, 1988.

On November 20, 1991, petitioner filed its VAT return for the third quarter of the taxable year 1991 covering the period August 1 to October 30, 1991. This VAT return reflected the amount of P41,818,520.36 corresponding to the input tax payments made by petitioner during the third VAT taxable quarter of the year 1991. The same return also indicated that after applying these input tax payments to the output tax in the sum of P793,222.98 there resulted an excess and refundable amount of P41,025,297.38. Subsequently, petitioner filed its VAT return on February 20, 1992 (Annex D, p. 10, CTA records) corresponding to the fourth VAT taxable quarter of the taxable year 1991 and indicated the amount of P43,880,467.09 as input tax payments on its local purchases of materials and supplies and capital goods and after applying this amount against the output tax of P729,239.54, resulted in a creditable input tax of P43,151,227.55.

On two separate occasions, petitioner filed claims for tax credit dated July 27, 1992 and September 30, 1992 accompanied by BIR Form No. 2552 (application for tax credit) but respondent did not act on these two claims, thus a petition for review was filed with this Court on

July 15, 1993. The claims for tax credit may be summarized as follows:

Period Covered	Amount Applied For	Date Filed
Aug. 1 to Oct. 30, 1991	P41,025,297.38	July 28, 1992
Nov. 1, 1991 to Jan. 31, 1992	42,856,323.66	October 8, 1992
	P83,881,621.04	

During the hearings on the case, respondent partially granted the claim for refund in the amount of P27,331,445.38, and as a consequence, a tax credit certificate was issued in favor of petitioner in the said amount by the respondent (Annex B, p. 122 CTA records). The refundable amount was based on the results of the investigation conducted by the BIR examiners summarizing their findings as follows:

AMOUNT APPLIED FOR TAX REFUND	(Benguet Corporation)	
3rd Quarter	P41,025,297.38	
4th Quarter	42,856,323.66	P83,881,621.04
ADD/DEDUCT ADJUSTMENTS		
a) Claims of input taxes without supporting documents		(163,170.11)
b) Input tax adjustments per BC's computation already taken up by examiner in adjustment (a)		38,160.17

c) Claims of input taxes on purchases of services from various contractors without the required VAT invoices representing cash advances and materials and supplies (gasoline, etc.) issued to contractors	(9,741,234.52)
d) Output tax on sale of gold to Central Bank (P512,603,377.20 x 1/11)	(46,600,307.02)
e) Unapplied/excess input taxes from purchases in 1st and 2nd quarters of 1991 directly identified with gold operations (see attached report of investigation - 1st Semester)	3,674,681.50
AMOUNT RECOMMENDED FOR TAX REFUND/CREDIT	P31,089,751.06
Accounted for as follows:	
To be refunded by : BIR	P27,331,445.38
BOC	3,758,305.68
Total Accounted for:	P31,089,751.06

Of the disallowances above-cited, petitioner takes exception mainly on the amount of P46,600,307.02 corresponding to the output tax on petitioner's sales of gold to the Central Bank. The objection of the petitioner stems from its reliance on VAT Ruling No. 373-88 which declared that sales of gold to the Central Bank are considered as export sales subject to zero-rate and RMC No. 59-88 which provides that sale of gold to the Central Bank by a VAT registered firm is zero-rated. Moreover, petitioner invokes the Central Bank charter which considers sales of gold to the Central Bank as constructive exports. Petitioner also takes issue on the issuance of VAT Ruling No. 8-92 which contains the change in the treatment of such sales to the Central Bank from export sales to domestic sales therefore subject to Value-added Tax and VAT Ruling No. 59-92 which orders the retroactive application of VAT Ruling No. 8-92 to sales of gold made in 1988 onwards.

Petitioner contends that the retroactivity of rulings that are prejudicial to the taxpayer is not in accord with Section 246 of the Tax Code which provides as follows:

> "SEC. 246. ***Non-retroactivity of rulings.*** - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner 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 the 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 materials different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith."

The issue presented to this Court for resolution is whether or not VAT Ruling No. 8-92 dated January 23, 1992, which considers sales of gold to the Central Bank as domestic sales, can be retroactively applied to petitioner's sales of gold to Central Bank made in August 1991 to January 1992.

This particular issue has already been soundly disposed of in a number of cases decided by this Court

(**Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 4794 in a Resolution, dated April 5, 1994; **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 we have been consistent in ruling that the retroactive application of VAT Ruling No. 8-92 will not be prejudicial to the taxpayer, hence not allowed under Section 246 of the Tax Code because it is clear from this provision (supra) that revocations, modifications and/or reversals of any rules and regulations promulgated by the Commissioner may be given retroactive application. It is only prohibited when the retroactive application will result in prejudice on the part of the taxpayer. In a similar consolidated case involving the same petitioner, entitled **Benguet Mining Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 4429, 4495, 4575, dated March 23, 1995, this Court subscribed to the view of the respondent embodied in Ruling No. 59-92 when we ruled, thus:

In *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (CTA Case No. 4794, April 5, 1994), We held that the retroactive application of VAT Rulings Nos. 8-92 and 59-92 may not necessarily be prescribed 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. Thus:

> "We hold that respondent Commissioner is correct in contending that petitioner will not suffer any undue prejudice from a retroactive application of VAT Rulings No. 008-92 and 59-92. As pointed out by respondent in his Ruling No. 59-92,
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> > When the same 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 transaction 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, said input taxes may already be legally converted as cost as available as deduction for income tax purposes. On this score, they are also not prejudiced by the retroactive application of the said ruling.
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> Petitioner's reliance on the ruling in the ABS-CBN case is clearly misplaced. In the first place, there is nothing in said decision which absolutely prohibits a retroactive application of the rules, regulations, rulings or decisions promulgated or rendered by respondent Commissioner pursuant to rule-making authority. On the contrary, the decision clearly supports what We have stated here. Moreover, the factual situation obtaining in the ABS-CBN case is clearly not on all fours with the instant case."

We find the foregoing ruling applicable to the instant cases. The admitted evidence on record does not show that petitioner will be unduly prejudiced by the retroactive application of the questioned BIR rulings. The mere fact the petitioner may now be precluded from passing on the 10% VAT on its sales to the Central Bank and may thus no longer have such input taxes refunded in cash cannot necessarily be equated with undue prejudice since VAT Rulings No. 8-92 and 59-92 still provide petitioner avenues for relief, that is by converting said input taxes as cost deductions for income tax purposes. Petitioner has not shown by means of competent evidence that such alternative relief notwithstanding, it still stands to suffer undue economic prejudice in the sense that the amount which it would be entitled to deduct as costs for income tax purposes is substantially less than the amount of input taxes to which it could have been entitled to a refund if the questioned rulings were not applied retroactively. In other words, absent any showing that the alternatives available to petitioner under the questioned rulings are clearly inadequate, any claimed prejudice on petitioner's part would at best be speculative.

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:

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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