REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FCF MINERALS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

CTA Case No. 8789

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 2 1 2016
2:00 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This resolves the Petition for Review filed on March 28, 2014 and the Supplemental Petition for Review filed on April 15, 2014 by FCF Minerals Corporation, praying for the reversal and setting aside of the Decision of the Commissioner of Customs dated April 1, 2014 and for the refund of the amount of ₱57,896,506.00, allegedly representing the amount paid as value-added tax (VAT) and fees on its importations of capital equipment.

THE PARTIES

Petitioner FCF Minerals Corporation (FCF) is a corporation duly organized and existing under Philippine laws and is engaged in the exploration, development, and commercial operation of mineral claims.[1]

On the other hand, respondent Commissioner of Customs (COC) is the head of the Bureau of Customs (BOC), which is a government instrumentality under the Department of Finance tasked with "the assessment and collection

[1] Par. 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. III, p. 1111.

of the lawful revenues from imported articles and all other dues, taxes, fees and charges, fines and penalties accruing under the tariff and customs laws".[2]

THE FACTS

Petitioner submitted five (5) Letters of Protests to the District Collector of Customs of the Port of Manila, which were docketed as Protest Case Nos. 2013-224, 2013-225, 2013-226, 2013-227, and 2013-253.[3] The said protest letters seek the refund of the VAT and fees assessed and paid on importation of various equipment for petitioner's Runruno Gold Molybdenum Project under the Financial or Technical Assistance Agreement (FTAA), detailed as follows:

Date of Filing of Protest	Protest Case No.	Description	Import Entry No.	Date of Entry	VAT	Fees
10/29/2013	2013-224[4]	78 pkgs Dump Truck	C48170	04/18/2013	₱26,686,444.00	₱ 1,000.00
10/29/2013	2013-225[5]	10 pkgs. Hydraulic Excavator	C44534	04/18/2013	5,295,716.00	1,000.00
10/29/2013	2013-226[6]	50 pkgs Hydraulic Excavator, Bulldozer, Motor Grader	C44535	04/18/2013	25,571,871.00	1,000.00
11/04/2013	2013-227[7]	1 Bundle Steel Rails	C122537	10/18/2013	23,095.00	250.00
12/18/2013	2013-253[8]	12 pkgs 3T Forklift and Spare Parts	C146371	12/12/2013	314,692.00	1,438.00
					₱57,891,818.00	4,688.00
TOTAL						**₱57,896,506.00**

On February 15, 2013, the Commissioner of Internal Revenue (CIR) issued Revenue Memorandum Circular (RMC) No. 17-2013[9], stating that FTAA contractors are liable to pay the taxes due under the National Internal Revenue Code (NIRC) and existing rules and regulations during and after their "recovery period".

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[2] Par. 2, Joint Stipulation of Facts, JSFI, docket, vol. III, p. 1111.
[3] Par. 3, Joint Stipulation of Facts, JSFI, docket, vol. III, p. 1111.
[4] Exhibits "P-2", "P-2-a" to "P-2-n", and submarkings, docket, vol. III, pp. 1243-1257.
[5] Exhibits "P-3", "P-3-a" to "P-3-n", and submarkings, docket, vol. III, pp. 1258-1272.
[6] Exhibits "P-4", "P-4-a" to "P-4-p", and submarkings, docket, vol. III, pp. 1273-1289.
[7] Exhibits "P-5", "P-5-a" to "P-5-d", and submarkings, docket, vol. III, pp. 1290-1294.
[8] Exhibits "P-6", "P-6-a" to "P-6-j", and submarkings, docket, vol. III, pp. 1295-1306.
[9] Par. 4, Joint Stipulation of Facts, JSFI, docket, vol. III, p. 1111.

On the basis of the said RMC, the District Collector of Customs of the Port of Manila issued a Decision on January 3, 2014, denying petitioner's protests.[10]

On January 20, 2014, petitioner filed a Notice of Appeal with the District Collector of Customs of the Port of Manila.[11]

In the 1st Indorsement dated January 28, 2014[12], the District Collector of Customs of the Port of Manila endorsed the case folder in light of the Notice of Appeal filed by petitioner on Protest Case Nos. 2013-224, 2013-225, 2013-226, 2013-227, and 2013-253.

On February 4, 2014, petitioner filed its Position Paper.[13]

Considering the lapse of thirty (30) days from February 27, 2014 without petitioner receiving the Decision of the Commissioner of Customs, petitioner filed its Petition for Review before this Court on March 28, 2014.

Thereafter, on April 1, 2014, respondent rendered a Decision affirming the January 3, 2014 Decision of the District Collector of Customs of the Port of Manila.[14]

As a result, petitioner filed a Supplemental Petition for Review before this Court on April 15, 2014.[15]

Respondent filed his Answer[16] on June 5, 2014, interposing the following Special and Affirmative Defenses:

> "13. Respondent repleads, reproduces and incorporates, by way of reference, all of the foregoing averments.
>
> ***The Commissioner of Customs did not err when he relied on***

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[10] Par. 5, Joint Stipulation of Facts, JSFI, docket, vol. III, p. 1112; Exhibit "P-1", docket, vol. III, pp. 1237-1242.
[11] Par. 6, Joint Stipulation of Facts, JSFI, docket, vol. III, p. 1112; Exhibit "P-7", docket, vol. III, p. 1306.
[12] Par. 7, Joint Stipulation of Facts, JSFI, docket, vol. III, p. 1112; Exhibit "P-9", docket, vol. III, p. 1308.
[13] Par. 8, Joint Stipulation of Facts, JSFI, docket, vol. III, p. 1112; Exhibit "P-10".
[14] Par. 9, Joint Stipulation of Facts, JSFI, docket, vol. III, p. 1112.
[15] Docket, vol. I, pp. 580-592.
[16] Docket, vol. I, pp. 609-629.

RMC 17-2013 in denying the petitioner's claim for refund.

At the outset, it bears to stress that the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) are separate bureaus under the Department of Finance (DOF). Both however have the common distinct primary function of generating revenues for the national government through the collection of taxes, customs duties, fees and charges. They principally perform the special function of being the instrumentalities through which the State exercises one of its great inherent functions-taxation (*Abakada Guro Party List vs. Hon. Cesar v. Purisima, 562 SCRA 251 [2008]*).

While they essentially have the same functions of collecting revenues for the government, the powers and functions of the BIR and BOC differ in material aspects and distinct with each other.

The powers of the BIR are delineated in Section 2 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 18, Chapter 4, Title II, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987.

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Meanwhile, the powers of the BOC are provided in Section 602 of the Tariff and Customs Code of the Philippines (TCCP), Volume II and Section 23 of Chapter 4, Title II, Book IV of E.O. 292.

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From the foregoing, it is readily apparent that the BIR is tasked with the assessment and collection of national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties and fines connected therewith, whereas the BOC is tasked with the assessment and collection of customs duties, taxes, fees and charges, fines and penalties accruing under the tariff and customs laws.

In other words, the BIR has jurisdiction over taxes imposed under the NIRC and its related laws, including and particularly, the assessment and collection of Value-Added Tax (VAT), as well as the determination of any exemption therefrom. On the other hand, the BOC has jurisdiction over customs duties, fees, and other charges arising from the TCCP and its related laws.

Nevertheless, while the powers and functions of the BIR and BOC are clear-cut, there are instances, however, when necessity and convenience require that the BOC performs functions inherent to the BIR.

This is best exemplified by the assessment and collection of internal revenue taxes, which should be within the jurisdiction of the BIR, but are being performed by the BOC. Among these internal revenue taxes is the VAT, particularly on importations, which is imposed under Title IV of the NIRC of 1997, as amended.

However, in those such limited instances, the BOC, in assessing and collecting such internal revenue taxes, is merely acting as an agent of the BIR, which is specifically mandated and allowed under Section 12(a) of the NIRC of 1997, as amended. Thus:

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To put it more clearly, while respondent COC has the power to collect national internal revenue taxes on imported goods, it is performing such function merely as an agent of the BIR which is the agency primarily tasked to collect the same. In performing such delegated function, respondent COC is bound to follow any memorandum, circular, and issuance, including the interpretation made, by the Commissioner of Internal Revenue (CIR) of the NIRC of 1997, as amended, and other relevant internal revenue tax laws.

It bears stressing that the power to interpret tax laws is exclusively vested in the Commissioner of Internal Revenue, as expressly provided in Section 4 of the NIRC of 1997, as amended, *to wit*:

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Considering that the power to interpret the provisions of the NIRC of 1997, as amended, and other tax laws is under the exclusive and original jurisdiction of the CIR, respondent COC is without authority to make his own interpretation of the said laws, much less modify and overturn any interpretation made by the former, pursuant to her vested powers under Section 4 of the NIRC of 1997, as amended. Thus, any interpretation made by the CIR relative to the provisions of the NIRC of 1997, as amended, and other tax laws is binding upon respondent COC, who, in turn, is merely acting as an agent of the CIR. All that respondent COC can do, as an agent of the BIR in collecting such internal revenue taxes, particularly on imported goods, is to faithfully implement the said interpretation rendered, and consequently, the issuance made by the BIR.

In the instant case, petitioner is claiming a refund of the VAT and fees imposed and collected by respondent COC on its various importations of capital equipment.

In claiming such refund, petitioner insists that respondent COC should have granted its request and not merely relied on an invalid RMC issued by the BIR. According to petitioner, the BIR could not validly take away its tax incentives under the FTAA by simply issuing a RMC, which is allegedly contrary to the Mining Act *(at pp. 13, 16, 18).*

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However, as discussed above, VAT is an internal revenue tax imposed under Title IV of the NIRC of 1997, as amended, and in the collection of which on petitioner's importations by respondent COC was pursuant to delegated authority to collect the same under Section 12(a) of the NIRC of 1997, as amended.

Being a mere collecting agent of the CIR with respect to the collection of VAT on imported goods, there is therefore no merit to petitioner's contention that respondent COC should have made his own determination on the matter of exemption by petitioner from payment thereof. To do so would be a blatant encroachment upon the exclusive and original jurisdiction of the CIR to interpret tax laws.

It also bears to point out that petitioner's application for exemption in order for the BOC to allow the release of its importations free from payment of taxes, duties, and fees was not yet affirmed nor endorsed by the DOF. On the other hand, said application for exemption was referred by the DOF to the BIR, which ultimately resulted to the issuance of the herein assailed RMC No. 17-2013.

In fact, as admitted by petitioner itself, the said issuance by the BIR was the subject of an appeal before the DOF.

Thus, while the instant petition simply claims for a refund of the VAT and fees it paid under protest, petitioner is essentially assailing the validity of RMC No. 17-2013 issued by the BIR, the validity of which, however, has not yet been resolved by the DOF, and is thus presumed to be valid and of *(sic)* effect.

Petitioner, nevertheless, relies on the case of *Caltex (Philippines), Inc. vs. Commissioner of Internal Revenue, 14 SCRA 599 (1965)*. This case, however, finds no application to the case at bar. While the said case vests jurisdiction upon respondent COC over protest cases involving exempt articles, nowhere in the said decision does it allow respondent COC to overturn an interpretation made by the CIR.

Moreover, it is an elementary principle that the construction by a government agency of a particular law must be given weight as the construction comes from the branch of the government called upon to implement it. Thus, the opinion of the CIR, as the person charged with the interpretation and enforcement of tax laws, is entitled to great weight and respect. *(Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary, 238 SCRA 63 [1994]).*

Petitioner is not entitled to a refund of VAT and fees from its various importations of capital equipment.

It is a basic principle that he who claims exemption from taxation must justify his claim by words too plain to be mistaken and too categorical to be misinterpreted. xxx

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In this case, petitioner claims that it is entitled to a refund of VAT and fees from its various importations of capital equipment because it is allegedly exempt from paying the same, citing Section 81 of the RA 7942, Section 4 of DAO No. 2007-12, and the provisions of its FTAA.

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On the other hand, *'Government Share'* is defined in Section 4 of DAO 2007-12 as:

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The above provisions, however, do not support the claim for refund of petitioner. While the above provisions prohibit the collection of the *'government share'* during the *'recovery period'*, the same do not constitute an express grant of exemption from payment of taxes under the NIRC of 1997, as amended.

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When the State chooses to enter into mineral agreements with contractors, it receives a *'government share'* from the contractors. The *'government share'* is paid by contractors to the government in exchange for the right to explore, develop and utilize mineral resources. It is a form of compensation given to the State for the exploitation and use of its mineral resources.

With this in mind, the sensible effect of the provisions relied upon by petitioner is that the contractor does not have to fully compensate the government for the exploitation and use of mineral resources during its recovery period. However, while RA 7942 enjoins the government form collecting its full *'government share'* during its recovery period, nowhere the said law does it expressly exempt mining companies from paying and customs duties and fees imposed under the NIRC of 1997, as amended.

Taxes, such as the subject VAT and fees collected on petitioner, as well as customs duties, are tax obligations of mining companies arising from the provisions of the NIRC and the TCCP. xxx

These taxes are collected from mining companies, not as compensation for the exploitation and use of mineral resources, but as tax obligations which they are bound to pay under the NIRC of 1997, as amended. They are due from the mining companies regardless of whether they are denominated as '*government share*' or not.

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It bears stressing that nothing in the law expressly exempts petitioner from paying taxes arising from its importation of any goods, materials or equipment. Particular attention should be given to Chapter XV of RA 7942, entitled 'Taxes and Fees', which is entirely devoted to the provisions on taxes and fees especially applicable to mining companies. A reading of said Chapter clearly shows that no tax exemption, express or implied, is granted to mining companies for the importation of capital equipment.

On the other hand, Section 81 relied upon by petitioner for its exemption from paying tax is not found in the Chapter devoted for Taxes and Fees. Instead, it is contained in a completely different Chapter-Chapter XIV entitled 'Government Share'. The logical conclusion that can be gleaned from this is that 'Government Share' is different from 'Taxes and Fees', and exemption from one does not automatically mean exemption from the other.

Had the framers intended to exempt mining companies from payment of taxes arising from the importation of capital equipment, they should have so stated in words too plain to be mistaken and too categorical to be misinterpreted, and they should have included such provision in the Chapter 'Taxes and Fees'. The framers are expected to know that tax exemptions are construed in *strictissimi juris*, and must therefore be clearly and expressly granted by statute. In the case at bar, however, no such clear and express grant is present.

In the absence of a clear grant of exemption from paying taxes arising from the importation of capital equipment, a claim for refund must necessarily fail. xxx

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> This being said, RMC 17-2013 did not run contrary to the law it seeks to interpret as erroneously deduced by petitioner. xxx
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> All told, petitioner, having failed to justify its claim for exemption by clear and express grant of statute, is not entitled to refund of its payment for VAT and fees."

Petitioner also filed its Reply to the Answer of respondent on July 9, 2014, reiterating that the CIR has no authority to interpret the provisions of the Philippine Mining Act and that the Commissioner of Customs erred in relying on the interpretations of the CIR.[17]

After the submission of the parties' respective Pre-Trial Briefs[18], the respective counsels of the parties appeared during the pre-trial conference held on July 24, 2014.[19]

On August 4, 2014, the parties filed their Joint Stipulation of Facts and Issues.[20] Thereafter, a Pre-Trial Order was issued by the Court on September 3, 2014.[21]

Trial ensued, giving both parties the opportunity to present their respective documentary and testimonial evidence.

After presentation, marking, identification, and offer, the Court admitted Exhibits "P-1" to "P-22-A" as part of petitioner's documentary evidence.[22]

On the other hand, respondent filed his "Manifestation and Motion (In Lieu of Comment)", stating that respondent will no longer be presenting any witness as the present case involves only questions of law.[23]

Petitioner submitted its Memorandum[24] on July 24, 2015; while respondent filed his Memorandum[25] on July 20, 2015. Accordingly, the case was declared submitted for decision on July 28, 2015.[26]

[17] Docket, vol. II, pp. 739-748.
[18] Docket, vol. II, pp. 1023-1038.
[19] Notice of Pre-Trial Conference issued on June 9, 2014, docket, vol. II, p. 631; Minutes of the Hearing dated July 24, 2014, docket, vol. II, p. 1054.
[20] Docket, vol. III, pp. 1111-1114.
[21] Docket, vol. III, pp. 1131-1137.
[22] Resolution dated April 1, 2015, docket, vol. III, pp. 1565-1566.
[23] Docket, vol. III, pp. 1580-1583.
[24] Docket, vol. III, pp. 1610-1641.

THE ISSUES

The parties submitted the following issues[27] for this Court's disposition:

1. Whether the COC erred when he denied the claim for refund of petitioner based on RMC No. 17-2013, representing VAT and other fees paid on its importation of capital equipment amounting to ₱57,896,506.00; and

2. Whether petitioner is entitled to the refund of VAT and other fees amounting to ₱57,896,506.00.

THE RULING OF THE COURT

The instant case arose from the Financial or Technical Assistance Agreement No. 04-2009-11 entered into by petitioner and the Government on September 19, 2009 for a gold-molybdenum project located in Barangay Runruno, Quezon, Nueva Vizcaya.[28]

The FTAA is defined under the Philippine Mining Act of 1995 or Republic Act No. 7942 as a contract involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources.

Under the FTAA, petitioner agreed to join and assist the Government in the large-scale exploration, development and commercial utilization of minerals in exchange for an exclusive right to conduct mining operation of the area.[29]

The FTAA is divided into five (5) phases, which are the exploration period, pre-feasibility study period, feasibility study period, development and construction period, and operating period.

On October 18, 2011, the Secretary of the Department of Environment and Natural Resources (DENR) issued an Order approving the Declaration of Mining Project Feasibility (DMPF)[30] for the Runruno Gold-Molybdenum Project of petitioner.[31]

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[25] Docket, vol. III, pp. 1587-1608.
[26] Docket, vol. III, p. 1644.
[27] Joint Stipulation of the Issues, JSFI, docket, vol. III, pp. 1113-1114.
[28] Exhibit "P-12" and "P-12-a", docket, vol. III, pp. 1332-1385.
[29] Exhibit "P-12", docket, vol. III, p. 1332.
[30] Exhibit "P-17", docket, vol. III, pp. 1497-1500.
[31] Exhibits "P-13-A" to "P-13-JJ", docket, vol. III, pp. 1450-1484.

According to petitioner, it is currently in the Development and Construction Period as allegedly shown by its various importations of capital equipment.

Petitioner claims that it is not liable to pay VAT and customs duties and fees on imported capital equipment, invoking Section 81 of the Philippine Mining Act of 1995 or Republic Act (RA) No. 7942, which allegedly provides that the *"Government Share"* in the FTAAs of mining companies, which includes VAT and customs duties on importation of capital goods, shall be collected only after the FTAA Contractor has fully recovered its pre-operating expenses and exploration and development expenditures.

In this regard, petitioner likewise claims that RMC No. 17-2013, which categorically states that FTAA contractors are liable to pay the taxes under the NIRC during and after their "recovery period", runs contrary to the law it seeks to interpret, which is RA No. 7942.

Petitioner asserts that the CIR has no authority to interpret the provisions of RA No. 7942 because the authority was granted by Congress solely to the DENR Secretary as provided under the said law.

Further, petitioner argues that RMC No. 17-2013 violates and breaches the clear contractual provisions of the FTAA, which is an executive contract between the Philippine Government and petitioner.

Respondent counter-argues that he did not err when he relied on RMC No. 17-2013 in denying petitioner's claim for refund of VAT and other fees paid on its importation of capital equipment.

Respondent further alleges that petitioner is not entitled to a refund of VAT and fees from its various importation of capital equipment. He claims that there is nothing in RA No. 7942 that expressly exempts petitioner from paying taxes arising from its importation of goods, materials or equipment. According to respondent, a reading of Chapter XV of RA No. 7942 entitled "Taxes and Fees" clearly shows that no tax exemption, express or implied, is granted to mining companies for the importation of capital equipment.

Respondent explains that had the framers of the law intended to exempt mining companies from payment of taxes arising from the importation of capital equipment, they should have so stated in words too plain to be mistaken and too categorical to be misinterpreted, and they should have included such provision in the Chapter "Taxes and Fees".

The collection of *"Government Share"* in FTAA, including VAT and customs duties on importation of capital goods, shall only commence after the FTAA contractor has fully recovered its pre-operating expenses.

In order to determine whether the importation of capital equipment by petitioner in connection with the FTAA is exempt from VAT during the "recovery period" as alleged by petitioner, the Court found instructive Section 81 of RA No. 7942, the pertinent portion of which reads:

> "SECTION 81. *Government Share in Other Mineral Agreements.* – The share of the Government in co-production and joint-venture agreements shall be negotiated by the Government and the contractor taking into consideration the: (a) capital investment of the project, (b) risks involved, (c) contribution of the project to the economy, and (d) other factors that will provide for a fair and equitable sharing between the Government and the contractor. The Government shall also be entitled to compensations for its other contributions which shall be agreed upon by the parties, and shall consist, among other things, the contractor's income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholders, in case of a foreign national, and all such other taxes, duties and fees as provided for under existing laws.
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> **The Government share in financial or technical assistance agreement shall consist of**, among other things, the contractor's corporate income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such **other taxes, duties and fees as provided for under existing laws**.
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> **The collection of Government share in financial or technical assistance agreement shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive.**" *(Emphasis supplied)*

Implementing the above provision is DENR Administrative Order (DAO) No. 2007-12, the pertinent parts of which are quoted hereunder for ready reference:

"SUBJECT: **REVISED GUIDELINES ESTABLISHING THE FISCAL REGIME OF FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENTS (FTAA)**

In line with the continuing policy of the Government to provide for a responsive regulatory framework in the management of mineral resources development in the Philippines and pursuant to Section 81 of Republic Act No. 7942, the Philippine Mining Act of 1995, DENR Administrative Order (DAO) No. 99-56 is hereby revised for the guidance and compliance of all concerned.

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Section 4. Fiscal Regime of a Financial or Technical Assistance Agreement

The fiscal regime of FTAA entered into by and between the Government of the Republic of the Philippines and FTAA Contractors shall be guided by the following provisions:

a. <u>General Principles</u>.

1. The Total Government Share shall consist of a Basic Government Share and an Additional Government Share.

2. The Basic Government Share shall consist of direct taxes, royalties, fees and other related payments as defined in this Order.

3. The Additional Government Share is the amount to be paid by the Contractor when the Basic Government Share is less than fifty percent (50%) of the Net Mining Revenue.

4. The Net Mining Revenue is Gross Output less Deductible Expenses.

b. Basic Government Share

The Basic Government Share shall consist of all direct taxes, royalties, fees and related payments required by existing laws, rules and regulations to be paid by the Contractor. It shall be the minimum share that Government shall receive during any Calendar Year. The following national and local taxes, royalties and fees paid by the Contractor to the Government during a Calendar Year constitute the Basic Government Share:

(a) Contractor's income tax;
(b) Customs duties and fees on imported capital equipment;
(c) Value-added tax on imported goods and services;
(d) Withholding tax on interest payments on foreign loans;
(e) Withholding tax on dividends to foreign stockholders;
(f) Documentary stamps taxes;
(g) Capital gains tax;
(h) Excise tax on minerals;
(i) Royalties for Mineral Reservations and to Indigenous Peoples, if applicable;
(j) Local business tax;
(k) Real property tax;
(l) Community tax;
(m) Occupation fees;
(n) Registration and permit fees; and
(o) All other national and local Government taxes, royalties and fees as of the effective date of the FTAA.

Related payments made by the Contractor for Special Allowance and Royalty to Indigenous Peoples or Indigenous Cultural Communities, if applicable, and which are subject of agreements entered into by and between the Contractor and concerned individuals or private parties, and were duly approved by the Government, shall be considered as part of the Basic Government Share.

Starting from the effective date of the FTAA, the Contractor shall pay all applicable taxes, royalties, fees and other related payments subject to the following:

i. **From the date of approval of the Declaration of Mining Project Feasibility up to the end of the Recovery Period as defined in this Order, the Contractor shall pay the above Items (h) to (o) which includes the Excise Tax on Minerals, Royalty on Mineral Reservations and to Indigenous Peoples, if applicable, and local taxes, fees and related imposts due to Local Government Units.**

ii. **After the Recovery Period, Contractor shall then pay all applicable taxes, fees, royalties and other related payments to the national and local Governments [Items (a) to (o) above]**.

iii. Any value-added tax on exported products refunded by or credited to the Contractor shall not form part of the Basic Government Share." *(Emphasis supplied)*

From the foregoing, it is clear that the collection from the FTAA Contractor of the *"government share"*, including VAT and customs duties on imported capital equipment, **shall commence only after the recovery period.**

In other words, **no VAT and customs duties on imported capital equipment shall be collected from petitioner, as FTAA Contractor, during the recovery period**.

To interpret otherwise would render the last paragraph of Section 81 of RA No. 7942 useless. Let it be emphasized that "all parts of a statute xxx should be given effect and made to serve its own distinct purpose, as no useless provision or one without any purpose at all could have been intended to be made part of, or incorporated in, the law".[32]

Furthermore, in the case of *La Bugal B'laan Tribal Association, Inc., et al. vs. Ramos, et al.*[33], the Supreme Court itself recognized the fiscal incentives granted to the FTAA contractor under RA No. 7942 and DAO No. 99-56 (subsequently amended by DAO No. 2007-12) to help support its cash flow during the most critical phase (cost recovery). In the said case, the Supreme Court categorically said that the FTAA Contractor will pay all the normal taxes and fees comprising the basic share of the government, **after the contractor has recovered its initial investment**. The applicable portion of the Supreme Court's ruling reads:

[32] *Malacora, et al. vs. Court of Appeals, et al.,* G.R. No. L-51042, September 30, 1982.
[33] G.R. No. 127882, December 1, 2004.

> "On the contrary, **DAO 99-56, entitled *Guidelines Establishing the Fiscal Regime of Financial or Technical Assistance Agreements*** aims to ensure an equitable sharing of the benefits derived from mineral resources. These benefits are to be equitably shared among the government (national and local), the FTAA contractor, and the affected communities. The purpose is to ensure sustainable mineral resources development; and a fair, equitable, competitive and stable investment regime for the large-scale exploration, development and commercial utilization of minerals. *The general framework or concept followed in crafting the fiscal regime of the FTAA is based on the principle that the government expects real contributions to the economic growth and general welfare of the country, while the contractor expects a reasonable return on its investments in the project.*
>
> Specifically, under the fiscal regime, the government's expectation is, *inter alia*, the receipt of its share from the taxes and fees normally paid by a mining enterprise. On the other hand, **the FTAA contractor is granted by the government certain fiscal and non-fiscal incentives to help support the formers cash flow during the most critical phase (cost recovery) and to make the Philippines competitive with other mineral-producing countries. After the contractor has recovered its initial investment, it will pay all the normal taxes and fees comprising the basic share of the government,** plus an additional share for the government based on the options and formulae set forth in DAO 99-56." *(Emphasis supplied)*

It must be pointed out that the "Philippine Mining Act of 1995," a special law, specifically governs the fiscal regime of FTAA and should therefore prevail over the NIRC of 1997, as amended, a general law on national internal revenue taxes. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special - the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.[34]

From the foregoing, it is clear that a FTAA contractor is exempt from payment of VAT and customs duties on importation of goods during the recovery period.

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[34] *Republic of the Philippines vs. Philippine Airlines, Inc. (PAL),* G.R. Nos. 209353-54 and 211733-34, July 6, 2015.

The Secretary of the DENR has the primary authority to promulgate such rules and regulations necessary to implement the intent and provisions of RA No. 7942.

Section 8 of RA No. 7942 provides:

> "SECTION 8. *Authority of the Department.* – **The Department** [35] shall be the primary government agency responsible for the conservation, management, development, and proper use of the State's mineral resources including those in reservations, watershed areas, and lands of the public domain. **The Secretary**[36] **shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director, promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act.**" *(Emphasis supplied)*

Clearly, the Secretary of the DENR is the one who has the authority to promulgate rules and regulations to implement the intent and provisions of RA No. 7942, including Section 81 of the said law concerning petitioner's tax exemption.

Thus, respondent should have applied the implementing rules promulgated by the Secretary of the DENR in the resolution of petitioner's claim for refund.

Petitioner failed to present evidence to prove that the imposition of tax and duties on the subject importation was made during the recovery period.

Again, Section 81 of RA No. 7942 and its implementing rules clearly provide that the collection of *"Government Share"* in FTAA, including the VAT and customs duties on importation of goods, shall commence after the recovery period or when the FTAA contractor has fully recovered its pre-operating expenses.

Relevantly, the provisions on the payment of *"government share"* in DAO No. 2007-12 are hereunder quoted:

[35] Under Section 3(i) of RA No. 7942, "Department" refers to the DENR.
[36] Under Section 3(aw) of RA No. 7942, "Secretary" refers to the Secretary of the DENR.

"**Section 6. Payment of Government Share**

xxx xxx xxx

b. Government Taxes, Royalties and Other Fees. The Contractor shall promptly pay all the taxes and fees required by the Government in carrying out the activities covered in the FTAA and in such amount, venue, procedure and time as stipulated by the particular law and implementing rules and regulations governing such taxes and fees, subject to all rights of objection or review as provided for in relevant laws, rules and regulations. **In the case of non-payment of certain taxes and fees during the Recovery Period, the Contractor shall follow the prevailing procedures for availing non-payment in accordance with pertinent laws, rules and regulations.** Where prevailing orders, rules and regulations do not fully recognize and implement the provisions covered by Section 4 of this Order, the Government shall exert its best efforts to ensure that all such orders, rules and regulations are revised or modified accordingly.

xxx xxx xxx

Section 7. Recovery of Pre-Operating Expenses

a. Recovery Period. Considering the high risk, high cost and long term nature of an FTAA Mining Operation, **the Contractor shall be given an opportunity to recover the expenses incurred during its pre-operating period**. After this period, the Government shall receive its rightful share from the national patrimony. **Recovery Period, as used in this Order, shall be a maximum of five (5) years or at a date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first.**

For this purpose, the above Net Cash Flows and Pre-Operating Expenses refer to the actual Net Cash Flows from Mining Operations and the actual Pre-Operating Expenses incurred by the Contractor, respectively, converted into its United States dollar equivalent at the time the expenditure was incurred.

In case of projects incurring very large investments with high production rate and extensive mine life, as determined by the Mines and Geosciences Bureau, the Recovery Period may be extended upon negotiation with the FTAA Negotiating Panel and subject to approval by the Secretary.

b. Recoverable Pre-Operating Expenses. **All Pre-Operating Expenses allowed for recovery under this Order shall be approved by the Secretary upon recommendation of the Director.** It shall be limited to actual expenses and capital expenditures relating to the following:

xxx xxx xxx

All Pre-Operating Expenses reported for recovery shall be subject to verification by Government or its designated representative or auditor. All expenses to be incurred in the verification of Pre-Operating Expenses shall be chargeable against the Contractor." *(Emphasis supplied)*

It is noteworthy that the provisions under the DAO No. 2007-12 regarding the "Basic Government Share", the "Payment of Government Share" and the "recovery period" were also reproduced in paragraphs 9.2[37], 9.6[38], and 9.7[39] of the FTAA entered into by petitioner and the government. Thus, compliance with the foregoing provisions is required in order to determine whether petitioner is entitled to the refund claim.

As previously mentioned, the Recovery Period shall be a maximum of five (5) years or at a date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first.

Accordingly, in order to determine the date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses, and ultimately, to ascertain whether the imposition of tax and duties on the subject importation was made during the recovery period, the amount of Net Cash Flows and Pre-operating expenses should first be determined.

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[37] Docket, vol. III, p. 1351.
[38] Docket, vol. III, p. 1354.
[39] Docket, vol. III, pp. 1356-1357.

The provisions of the implementing rules and the stipulations in the FTAA as quoted above also require compliance with certain requirements before the pre-operating expenses can be allowed for recovery, such as the approval of the Secretary upon recommendation of the Director of the Mines and Geosciences Bureau.

However, a review of the evidence presented by petitioner shows that it failed to establish that the VAT and customs duties on importation of capital equipment were imposed and paid during the recovery period or that it has not yet recovered its pre-operating expenses at the time of imposition and payment of VAT and customs duties.

While petitioner presented certifications issued by Mario Ancheta – the OIC-Regional Director of Mines and Geosciences Bureau, Regional Office No. II,[40] a reading of the said certifications reveals that the same only certify that petitioner shall not be required to pay items (a) to (g) of Section IX subsection 9.2 of the FTAA, including the VAT and customs duties on imported capital equipment, from the date of approval of the Declaration of Mining Project Feasibility, or on October 18, 2011, up to the end of the Recovery Period.

Notably, the certifications likewise state that the equipment described therein shall still be subjected to verification by the Mines and Geosciences Bureau. There is nothing in the said documents which would show that the Mines and Geosciences Bureau certified that petitioner is exempt from payment of VAT and customs duties on the importation of goods at the time the tax and duties were imposed on petitioner's importation of capital equipment.

Without any evidence to prove that petitioner has complied with the requirements provided under the FTAA and the implementing rules of RA No. 7942, the Court cannot determine whether petitioner has not yet recovered its pre-operating expense at the time when the importation of its capital equipment was subjected to VAT and customs duties. Therefore, the Court cannot determine whether petitioner is exempt from the VAT and customs duties it paid on the importation of capital equipment.

As cases filed before this Court are litigated *de novo*, the party-litigants must prove every minute aspect of their cases.[41] The taxpayer must present convincing evidence to substantiate a claim for refund.[42]

[40] Exhibits "P-13-A" to "P-13-JJ", docket, vol. III, pp. 1450-1484.
[41] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[42] *Far East Bank and Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006.

The Court reiterates its ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[43]

Considering that petitioner failed to submit sufficient evidence to support its claim for refund, the instant Petition for Review must necessarily fail.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[43] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice