REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NOS. 4686 and 4829

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 27 1995

x - x

D E C I S I O N

These cases involve two separate petitions filed by petitioner to toll the running of the two-year prescriptive period for the filing of claims for the issuance of tax credit certificates or refund of input tax attributable to exportations of certain goods, pursuant to Section 204 of the National Internal Revenue Code.

Petitioner is a domestic corporation engaged in the mining business, specifically the exploration, development and operation of mining properties for purposes of commercial production and the marketing of mine products. It is a VAT-registered enterprise, with VAT Registration No. 31-9-000027 issued on January 1, 1988. Sometime in January 1988 petitioner filed an application for zero rating of its sales of mine products, which application was duly approved by respondent Commissioner of Internal Revenue.

CTA CASE NO. 4686

On May 21, 1990 petitioner filed its VAT return for the period February 1, 1990 up to April 30, 1990, reflecting therein zero-rated sales totalling ₱795,060,159.68. The same return also states that for the period covered, petitioner allegedly made input tax payments in the amount of ₱29,583,438.16 on its local purchases of materials and supplies and capital goods, on importations of materials and supplies and capital goods, and on purchases of services, and a creditable input tax in the amount of ₱22,020,426.62.

On August 20, 1990, petitioner filed its VAT return for the period May 1, 1990 to July 31, 1990, reflecting zero-rated sales totalling ₱865,271,330.93. The return also showed a total of ₱27,717,396.37 as input tax payments on its local purchases of materials and supplies and capital goods, and on purchases of services, and a balance of ₱14,543,822.04 as creditable input tax after applying ₱12,577,709.71 against the output tax for the same quarter, and carrying over the balance of ₱595,864.62 to the succeeding quarter.

On April 17, 1991 and May 21, 1991, petitioner filed separate applications for tax credit of input taxes for the periods February 1 to April 30, 1990, and May 1 to July 31, 1990, respectively, in the amount of ₱36,564,248.66, broken down as follows:

<u>Period Covered</u>	<u>Amount Applied For</u>
February 1 - April 30, 1990	₱ 22,020,426.62
May 1 - July 31, 1990	<u>₱ 14,543,822.04</u>
	₱ 36,564,248.66
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Failing to obtain a favorable response to its application despite the lapse of the 60-day period provided under Section 106(e) of the Tax Code for the resolution of claims for tax credit, petitioner filed the instant petition to toll the running of the reglementary two-year prescriptive period for the filing of claims for tax refund under Section 204 of the Tax Code.

<u>CTA CASE NO. 4829</u>

On November 20, 1990, petitioner filed its VAT return for the period August 1, 1990 to October 31, 1990, showing zero-rated sales in the amount of ₱624,153,479.93. The return also showed input tax payments totalling ₱31,737,827.66 on petitioner's purchases of materials and supplies and capital goods, on importations of materials and supplies and capital goods, and on purchases of services, and a balance of ₱25,490,310.37 as creditable input tax after applying ₱6,247,517.29 against the output tax for the same quarter.

On February 20, 1991, petitioner filed its VAT return for the period November 30, 1990 to January 31, 1991, showing zero-rated sales in the amount of ₱918,902,263.59. The return also reflected input tax payments of ₱38,700,599.21 on petitioner's local purchases of materials and supplies and capital goods, and on purchases of services, and a balance of ₱22,854,688.93 as creditable input tax after applying ₱15,845,910.28 against the output tax for the same quarter.

On July 30, 1991 and December 2, 1991, petitioner filed separate applications for input tax credit for the periods August 1 to October 31, 1990 and November 1 to January 31, 1991, respectively, in the total amount of ₱48,244,999.30, broken down as follows:

Period Covered	Amount Applied for
August 1 - October 31, 1990	₱ 25,490,310.37
November 1, 1990 - January 31, 1991	₱ 22,854,688.93
	₱ 48,344,999.30

Again, failing to get a favorable response from respondent despite the lapse of the reglementary period for resolving applications for tax credit, petitioner filed the instant petition.

During the pendency of these cases, Revenue Examiner Mercedes Daroya-Magno issued a Memorandum dated May 7, 1993 (Exhibit C) addressed to respondent Commissioner, outlining the results of her investigation of petitioner's claims. Said memorandum states in part as follows:

> "2. Sale of gold to CB were treated by the subject taxpayer as direct export. However, based on VAT Ruling No. 008-92 and RMO 22-92, this Office ruled that the sale of gold by the mining companies to the Central Bank is a local sale; thus subject to the value-added tax of 10% thereof. The total sales of gold to CB amounted to $37,7715,494.02 or ₱928,501,946.56 for the period under any VAT its sale of gold to CB, naturally no output tax this sale was declared on its VAT returns. Therefore, Benguet is still liable for output tax due thereon which is computed by multiplying the invoice amount by factor 1/11.
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> 10. The output tax due on sale of gold to CB which was credited to the available input tax, which resulted to an assessment computed as follows:

Amount of claim	₱ 118,329,433.64
Less: Disallowances	40,589,933.23
Allowable input tax	77,739,500.41
Less: Other deduction Output tax on sale of gold to Central Bank (P928,501,946.56/11)	84,409,267.87
Amount due	6,669,767.46
Add: 25% surcharge	1,667,441.87
Interest (10-12-90 to 05-20-93)	4,344,612.42
Compromise	25,000.00
Amount still due and collectible	₱ 12,706,821.75

As previously stated, the disallowance of petitioner's claims was based on VAT Ruling No. 8-92 dated January 23, 1992 and VAT Ruling No. 59-92 dated April 28, 1992, which retroactively revoked previous rulings of respondent Commissioner treating sales of gold to the Central Bank as constructive exports for purposes of zero-rating, and instead considered such sales as domestic sales and therefore subject to the 10% Value-Added Tax. It is the retroactive application of these two rulings that petitioner assails in these consolidated petitions.

Petitioner contends that the retroactive application of VAT Ruling No. 8-92 violates Section 246 of the Tax Code, as well as certain decisions of the Supreme Court which hold that BIR rulings cannot be applied retroactively if to do so would be prejudicial to the taxpayers (c.f. Marinduque Iron Mines Agents vs. Municipality of Hinabangan, Samar, 11 SCRA 417; ABS-CBN vs. Commissioner of Internal Revenue, 108 SCRA 142). To bolster its claim, petitioner asserts that -

> "The undue prejudice caused to the petitioner by a retroactive application of VAT Ruling No. 008-92 is evident. It was issued only on January 23, 1992 which is years after petitioner has religiously relied on and complied with previous BIR issuances and rulings that sales of gold to the Central Bank are considered as export sales. The petitioner has also relied on CB Circulars which have the effect of law. Hence, these sales should be considered as zero-rated and the VAT input taxes corresponding to such sales are refundable.
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> The petitioner has no other activities subject to the 10% VAT. The conversion of the input taxes into cost deductions for income tax purposes is of no use to petitioner because it has little or no income to deduct these from. The fact remains, that the petitioner was not able to claim cash refunds which it can use to finance its operations. Neither were (sic) petitioner able to obtain tax credits which it may use freely in the payment of their (sic) internal revenue tax liabilities. What is worse, is the fact that petitioner was not able to pass on the 10% VAT to the Central Bank, on the portions corresponding to local sales, if these sales should not have been treated as export sales. To assess petitioner the 10% VAT on these sales would indeed be unduly prejudicial.
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> Furthermore, it is undeniable that petitioner relied on BIR's various issuances that sales of gold to the Central Bank are zero-rated, sold its gold produce to the CB without passing or billing the VAT on these

sales, which it could have done. It stands now prejudiced to the extent of 1/11 of the purchase price of its gold sales to the Central Bank and could not now demand and secure payment of said amount from the Central Bank. It is highly improbable that the Central Bank will ever pay the prejudiced 1/11 purchase price and there is no way petitioner to (sic) recoup such loss but, left nothing to shoulder the damage.

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Uncontestable (sic), petitioner shall be prejudiced by a retroactive application of VAT Ruling 8-92 because the sales of gold with (sic) the Central Bank were consummated from February 1, 1990 to January 31, 1991. At that time, petitioner in good faith relied on the representations and issuances of the BIR that sales of gold to the Central Bank were export-sales subject to zero-rate. Thus, petitioner's reliance on these administrative issuances was the operative fact to which legal consequences are attached and petitioner (sic), in its vain attempt to revoke previous rulings, cannot hide from the doctrine of estoppel because, to allow him (sic) is tantamount to bad faith, betrayal of trust and inconsistent with justice and fair play.

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Following these doctrinal rulings VAT Ruling 8-92 cannot be given retroactive effects on petitioner's sales of gold to CB from February 1, 1990 to January 31, 1991 because it would be prejudicial to petitioner for the following reasons:

1. The BIR has issued assessment notices and demand letters for alleged deficiency VAT output tax on petitioner's sale of gold to CB;

2. The BIR has offsetted (sic) from petitioner's refundable input tax the latter's alleged VAT output tax liability on its sale of gold to CB was more prejudicial than the mere

> issuance of an assessment notice and demand letter to pay because it effectively denied petitioner the opportunity to contest the assessment and petitioner was deprived of its property without due process of law." (Petitioners' memorandum, pp. 13 - 19)

We hold against petitioner.

The issue of the retroactive application of VAT Ruling Nos. 8-92 and 59-92 has been repeatedly resolved by this Court in a number of cases, some of which even involve petitioner. In all such cases, We have consistently upheld the retroactive application of these two rulings.

In Benguet Corporation vs. Commissioner of Internal Revenue (CTA Case Nos. 4429, 4495 and 4575), We had occasion to squarely address the very same issue raised by petitioner in the instant cases. In upholding the retroactive application of VAT Rulings 8-92 and 59-92, We explained our position as follows:

> "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 proscribed 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:
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> > '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,

'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 transactions 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 cost of the tax passed-on shall legally stop and rest, hence, in this connection, said input taxes may already be legally converted as cost available as deduction for income tax purposes. On this score, they are also not prejudiced by the retroactive application of the said ruling.

> 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 his 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."
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> 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 that 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."

In the more recent case of Benguet Consolidated vs. Commissioner of Internal Revenue (CTA Case No. 4945, January 26, 1995) We again upheld the validity of the questioned VAT rulings in this wise:

"Petitioner in its Memorandum also disputed the retroactive application of VAT Ruling No. 008-92 to 1991 the year when such sales (to the Central Bank) took place. It argued that Section 246 of the Tax Code prohibits retroactivity of rulings when the same will be prejudicial to the taxpayers. In entering into such transactions with the Central Bank, petitioner maintains that it relied on previous BIR Rulings which considered sales of gold to CB as zero-rated, thus the petitioner was not able to pass on the 10% VAT to the Central Bank, moreover, the petitioner claims the BIR has already issued an assessment demanding for the payment of VAT on these transactions. Petitioner contends that a retroactive application of the aforementioned rulings given these circumstances is highly prejudicial on its part.

This Court finds the position of the petitioner untenable. We agree with the Respondent that such retroactive application will not be prejudicial to the petitioner. In VAT Ruling No. 59-92, respondent elucidates this point clearly:

> 'When the said 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 transactions 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 available as deduction for income tax purposes. On this score, they are also not prejudiced by the retroactive application of the said ruling.'

With respect to the contention of petitioner that the assessment issued to them by the BIR makes damage and prejudice suffered by them actual present and real, VAT 59-92 Ruling has this to say:

'This office does not also believe that the said mining companies may be unduly prejudiced if the said revocation is retroactively applied and this office assesses the said companies for deficiency 10% VAT, according to the opinion No. 4, s. 1992. said mining companies did not pass on to the CB any 10% VAT because they relied, in good faith, upon the said earlier rulings of the BIR.

Please be informed, however, that under Section 6 of VAT Revenue Regulations No. 5-87 in connection with the procedures in computing for the 10% VAT on sales (output tax), if the sale is not shown in the sales invoice, the 10% VAT or output tax therein is computed, based on 1/11th of the amount billed to the buyer (in this case, the buyer is the CB). It follows, the deficiency

> 10% that may be assessable against the said companies will only be equal to 1/11th of the amount billed to the CB rather than 10% thereof. In short, said companies may only be charged based on the tax amount actually and technically passed on to the CB as part of the invoiced price. The said companies may also deduct, as input tax credit, their aforementioned input taxes, which, by virtue of the said revocation are not allowable as input tax refund. It follows, the said mining companies will not truly be unduly prejudiced by the said retroactive application of the revocation."

We find the foregoing disquisitions on all fours with the instant cases. It bears stressing that petitioner's claimed injury from the retroactive application of the questioned rulings is the alleged assessment purportedly issued by respondent for deficiency output tax of ₱12,706,821.75. Significantly, however, the admitted evidence on record does not show that a notice of assessment had in fact already been issued against petitioner. On the contrary, Revenue Examiner Magno, on re-direct examination by petitioner's counsel, candidly admitted that she was not aware if any notice of assessment was issued to petitioner as a result of her recommendation. Thus:

Q: (Atty. Belen): Would you know whether the assessment referred to during your cross whether this has been released?

A: I don't know.

Q: You don't know. Would you know whether this has been paid? Would you know whether this has already been released?

A: Released the ...

Q: The assessment.

Judge De Veyra: Do you know?

A: Already served to the taxpayer?

Q: Yes.

Judge De Veyra: What is your answer?

A: I did not know.

Judge De Veyra: You do not know. Next question.

Atty. Belen: No more, Your Honors.

The fact of the matter is that petitioner did not present a single shred of evidence to show the assessment purportedly issued against it by respondent. Neither is there anything in the BIR records submitted to the Court that would show that such notice of assessment had indeed been issued to and received by petitioner, and what action, if any, petitioner took in respect of such notice.

Finally, anent the alleged damage resulting from the offsetting of petitioner's output tax liability from its refundable input tax, suffice it to say that petitioner's primary remedy lies in a protest which should be properly lodged in the office of respondent Commissioner. The records before us do not indicate that petitioner protested such offsetting, much less that respondent Commissioner had rendered a decision on such protest which would necessitate the exercise by this Court of its appellate jurisdiction over decisions of respondent Commissioner. Consequently, We are constrained to conclude that the claimed prejudice to petitioner arising from the retroactive application of VAT Ruling Nos. 8-92 and 59-92 is, at best, highly speculative and, therefore, untenable.

Claims for refund are in the nature of claims for exemption from taxation (see Comm. of Internal Revenue vs. Ledesma, L-17509, Jan. 30, 1970, 31 SCRA 95; Resins, Inc. vs. Auditor General, L-17888, Oct. 29, 1968, 25 SCRA 754.)

Claims for refund are construed strictly against the claimants and cannot be allowed unless proven explicity and categorically. (Caltex [Phil.] Inc. vs. Comm. of Internal Revenue, CTA Case No. 2871, Jan. 29, 1986.

Petitioner (taxpayer) has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations. (Caltex [Phil.] Inc. vs. Comm. of Internal Revenue, CTA Case No. 2871, January 29, 1986.

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED.** No pronouncement as to costs.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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