REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5167

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:
MAY 25 1998

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DECISION

This case involves a claim for issuance of tax credit certificate in the amount of P18,855,121.79 representing unutilized input value-added tax (VAT, for brevity) for the taxable period November 1, 1992 to January 31, 1993.

Petitioner is a domestic 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 in marketing mine products produced by it. It is a VAT registered taxpayer with VAT Registration No. 31-9-000027 (Exh. A, Petitioner).

On May 4, 1988, petitioner secured an approval for zero rating from the Bureau of Internal Revenue with respect to its sale of goods to persons or entities which are effectively zero rated (Exhs. B and B-1, Petitioner).

For the period November 1, 1992 to January 31, 1993, petitioner filed its VAT return showing the following data: (Exhs. C to C-5, inclusive, Petitioner)

Details Of Sales	Amount	VAT Output Tax
Taxed Goods/Services	P 10,265,706.60	P 1,026,567.36
Zero Rated Sales	638,720,731.68	none
Exempt Sales	-	none
Total Sales	P648,986,438.28	P 1,026,567.36

Details of Purchases	Amount	VAT Input Tax
Carried Over From Previous Quarter		P23,289,152.50
Domestic Purchases Of Goods/Services	P160,875,511.58	16,087,551.16
Importation Of Goods	38,597,780.00	3,859,778.00
Purchases Not Qualified For Input Tax Credit	-	none
	Total Input Tax	P43,236,481.66
EXCESS VAT CREDITS		P42,209,914.30

Out of the amount of P42,209,914.30, only the sum of P23,224,040.80 became the subject of claim for refund in CTA Case No. 5133 which was already decided on August 29, 1997 in favor of petitioner. From the remaining amount of P18,985,873.50, petitioner only sought a lesser sum of P18,855,121.79 by filing an application for tax credit/refund of VAT paid with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, on July 8, 1994, pursuant to BIR Revenue Audit Memorandum Order No. 2-93 (Exhs. D, D-1, E and E-1, Petitioner).

On October 28, 1994, petitioner filed the instant petition for review in order to preserve its right to judicially claim for the refund of excess input VAT payments since respondent did not act on its request more than sixty (60) days, from the date of application for refund was filed, as prescribed under Section 106(e) of the Tax Code.

On August 7, 1996, while the case was pending trial, petitioner filed a Manifestation stating that the respondent Commissioner of Internal Revenue has issued in its favor a Tax Credit Certificate No. SN 006135 in the amount of P14,959,235.78. However, as this amount represents only a portion of P18,855,121.79 which is the total amount of its claim for tax credit involved in this case, petitioner is still pursuing the remaining balance of P3,895,886.01.

Meanwhile, on August 30, 1996, respondent Commissioner of Internal Revenue filed a "Motion To Dismiss Above Entitled Petition" on the ground that she already granted the amount pertaining to input taxes on domestic goods and services and that petitioner has no longer any cause of action against her.

In disposing of the said motion, this Court ruled in a Resolution, dated November 15, 1996, that respondent Commissioner of Internal Revenue is an indispensable

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party and therefore should be included and must stay as a party respondent. However, since the remaining amount of P3,895,886.01 represents input VAT on importation, the claim for tax credit should be acted upon by the Commissioner of Customs pursuant to an internal arrangement between the Bureau of Internal Revenue and the Bureau of Customs, hence, the respondent Commissioner of Customs was included herein as a necessary or proper party.

The lone issue to be resolved in this case is whether or not petitioner is entitled to a tax credit in the amount of P3,895,886.01 representing input VAT on importation for the period November 1, 1992 to January 31, 1993.

After a careful scrutiny of the evidence presented by both parties, this Court is granting petitioner a lesser amount of P3,102,309.20. Although it may be argued, that the respondent Commissioner of the Bureau of Customs is currently processing the issuance of a tax credit in a larger amount of P3,859,778.00 as per revenue examiners' report (Exh. 2, Respondent), We are giving more weight to the findings arrived at by the independent CPA engaged by petitioner.

It was noted that under the independent CPA certification, the amount recommended, after verification of documents, is only P18,061,544.98 out of the original claim for tax credit of P18,855,121.79, computed as follows.

Excess input taxes before adjustment for exceptions (equivalent to the amount of claim)		₱18,855,121.79
Less: Exception noted		
a.	Purchases not supported by proper documents	₱ 191,965.58
b.	Purchases not supported by original documents	17,736.90
c.	Purchases of services supported only by Provisional Receipts	20,801.68
d.	Purchases of goods/ services supported by non-VAT invoices/ORs	475,289.11
e.	Purchases of goods and services supported by invoices/ORs not in the Company's name	24,146.74
f.	Purchases supported by Invoices/ORs without printer's BIR permit	55,787.79
g.	Wrong tax base used (portion of contract price not supported by VAT OR)	7,849.01
	Total	₱ 793,576.81
ALLOWABLE INPUT TAX CREDITS		₱18,061,544.98

Section 26 of Rule 130 of the Rules of Court states that:

> SEC. 26. *Admissions of a party.* - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

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Therefore, in presenting the CPA certification, petitioner must have acknowledged its entitlement to such lesser amount.

Thus, inasmuch as the respondent Commissioner of Internal Revenue has already issued a Tax Credit Certificate No. SN 006135 in the amount of P14,959,235.78 in its favor, petitioner is now entitled to the balance of P3,102,309.20, computed hereunder:

Recommended claim for refund per independent CPA certification (Exh. G)	P18,061,544.98
Less: Tax credit issued by the BIR (Exh. 2)	14,959,235.78
Balance of allowable tax credit	₱ 3,102,309.20

WHEREFORE, in view of the foregoing, the petition for review is hereby partially granted. Respondent Commissioner of Customs is ORDERED to ISSUE a tax credit in favor of the petitioner in the sum of P3,102,309.20, representing input VAT on importation for the period November 1, 1992 to January 31, 1993.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

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