

SECOND DIVISION

[G.R. No. 202534, December 08, 2018]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V.
SEMIRARA MINING CORPORATION, RESPONDENT.**

D E C I S I O N

A. REYES, JR., J.:

Before this Court is a Petition for Review^[1] under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision^[2] of the Court of Tax Appeals (CTA) *En Banc* dated March 22, 2012, which sustained the decision of the CTA Division, and Resolution^[3] dated June 28, 2012 likewise issued by the CTA *En Banc* in CTA EB No. 752.

The Factual Antecedents

Petitioner is the Commissioner of Internal Revenue (CIR) who has the authority to determine and approve application for refund or issuance of Tax Credit Certificate (TCC).^[4] Respondent Semirara Mining Corporation (SMC) is a domestic corporation engaged in the exploration, extraction, and sale of ship coal, coke, and other coal products.^[5]

Respondent SMC operates a coal mine in Semirara, Caluya, Antique and sells its production to the National Power Corporation (NPC), a government-owned and controlled corporation in accordance with the duly executed Coal Supply Agreement between NPC and respondent SMC.^[6]

On July 11, 1977, the predecessors-in-interest of respondent SMC entered in a Coal Operating Contract (COC) with the Philippine Government through the Energy Development Board of the then Ministry of Energy pursuant to Presidential Decree (PD) No. 972.^[7]

PD No. 972 provides various incentives to COC operators to accelerate the exploration, development, exploitation, production and utilization, of the country's coal resources, including various tax exemptions, to wit:^[8]

"Section 16. Incentives to Operators. The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:

a) Exemption from all taxes except income tax;

x x x x.

The foregoing provision was included in the terms and conditions of the said COC under section 5.2 therein, to wit:

"Section V. Rights and Obligations of the Parties

...

5.2 .The OPERATOR shall have the following rights:

a) **Exemption from all taxes (national and local) except income tax...** (Emphasis supplied)

Respondent SMC also claimed that Section 109 of Republic Act (R.A.) No. 8424 or the National Internal Revenue Code of 1997 (NIRC) exempted it from Value Added Tax (VAT) on its sales or importation of coal.^[9]

However, after the NIRC was amended and R.A. No. 9337 became effective, the NPC started to withhold 5% final VAT on coal billings of respondent SMC.^[10] In fact, on February 9, 2007, NPC remitted to the Bureau of Internal Revenue (BIR) the final VAT withheld from respondent SMC's sales of coal in the total amount of P15,292,054.93.^[11]

In view of the foregoing, respondent SMC requested for a BIR pronouncement to confirm that its sales of coal to NPC was still tax exempt from VAT. In response, petitioner CIR issued BIR Ruling No. 0006-2007 confirming respondent SMC's VAT exemption.^[12]

Subsequently, on May 21, 2007, respondent SMC filed with the Revenue District Office (RDO) No. 121 an Application for Tax Credits/Refunds for P15,292,054.93.^[13] All the supporting documents representing the final VAT withheld on the coal billings of respondent SMC for the month of January 2007 were attached there.^[14]

However, due to alleged inaction, on February 4, 2009, respondent SMC filed a Petition for Review with the Court of Tax Appeals (CTA) Division.^[15]

The Ruling of the CTA Division

On January 4, 2011, the CTA Division granted respondent SMC's claim for refund, to wit:^[16]

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P15,292,054.91, representing the final withholding value-added tax (VAT) on its sales of coal for the month of January 2007, which the National Power Corporation (NPC) erroneously withheld and remitted to the Bureau of Internal Revenue (BIR) on February 9, 2007.

SO ORDERED.

The CTA Division found that respondent SMC's sales of coal for the month of January 2007 is a tax exempt transaction pursuant to Section 109(K) of the NIRC of 1997, as amended, in relation to Section 16 of PD No. 972.^[17]

Moreover, Semirara's administrative claim filed on May 21, 2007 and the Petition for Review filed on February 4, 2009 were within the two year prescriptive period.^[18]

Petitioner CIR moved for reconsideration but was denied.^[19] Aggrieved, petitioner CIR filed a Petition for Review before the CTA *En Banc*.

The Ruling of the CTA *En Banc*

On March 22, 2012, the CTA *En Banc* promulgated a Decision affirming the assailed CTA Division's decision and resolution, to wit:^[20]

WHEREFORE, premises considered, the instant petition is hereby **DENIED**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

The CTA *En Banc* pointed out that the petition was a mere rehash of the issues raised in petitioner CIR's denied Motion for Reconsideration, without any new matter or arguments to consider.^[21] This Court has consistently ruled that pursuant to Section 109 (k) of R.A. No. 9337, respondent SMC is VAT exempt under PD 972.^[22] Consequently, the exhaustion of administrative remedies for the tax refund claim is an irrelevant argument.^[23]

It also clarified that while petitioner CIR already admitted the VAT exemption of respondent SMC through BIR Ruling No. 0006-07, respondent SMC's claim is still valid even without said BIR Ruling.^[24] Respondent SMC's claim is based on an express grant of exemption from a valid and existing law, not on estoppel on the part of the government.^[25]

Furthermore, considering that cases filed with the CTA Division are litigated de novo, the documents submitted to the BIR, whether complete or not, has no evidentiary value.^[26] Only the evidence formally offered before the CTA has value, and in this case, respondent SMC substantially justified its claim before the CTA.^[27]

Finally, the CTA *En Banc* reminded the petitioner CIR that no one, not even the State should enrich oneself at the expense of another.^[28] Thus, once a taxpayer is clearly entitled to a tax refund, the State should not invoke technicalities to keep the taxpayer's money.^[29]

The Motion for Reconsideration filed by respondent was likewise denied in its Resolution dated June 28, 2012.^[30]

Hence, petitioner CIR filed the instant petition.

The Issue

The core issue to be resolved is whether the CTA erred in ruling that SMC is entitled to a tax refund for the final VAT withheld and remitted to the BIR from its sales of coal for the month of January 2007.

The Court's Ruling

The petition is bereft of merit.

As correctly ruled by the CTA, respondent SMC is exempt from payment of VAT under Section 16 of PD 972, and pursuant with the provisions of Section 109(K) of R.A. No. 9337, amending the NIRC.

Section 16 of the PD 972 expressly provides for incentives to coal operators including exemption from payment of all taxes except income tax, to wit:

"Section 16. Incentives to Operators. The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives: (a) Exemption from all taxes except income tax;

x x x x"

In fact, the foregoing tax exemption was incorporated in Section 5.2 of the COC between respondent SMC and the government, to wit:

"Section V. Rights and Obligations of the Parties

. . .

5.2 .The OPERATOR shall have the following rights:

a) **Exemption from all taxes (national and local) except income tax...** " (Emphasis supplied)

As regards the claim of petitioner that respondent SMC's VAT exemption has already been repealed, this Court affirms the CTA decision that respondent SMC's VAT exemption remains intact. R.A. No. 9337's amendment of the NIRC did not remove the VAT exemption of respondent SMC. In fact, Section 109(K) of R.A. No. 9337 clearly recognized VAT exempt transactions pursuant to special laws, to wit:

"REPUBLIC ACT NO. 9337

AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

x x x x

SEC. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

"SEC. 109. *Exempt Transactions.* — (1) Subject to the provisions of Subsection (2) hereof, **the following transactions shall be exempt from the value-added tax:**

x x x x

K) **Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws,** except those under Presidential Decree No. 529; (Emphasis and underscoring supplied)"

Clearly, the VAT exemption of respondent SMC under PD No. 972, a special law promulgated to promote an accelerated exploration, development, exploitation, production and utilization of coal, was not repealed.

The issues raised and decided in this case is far from novel. In fact, this Court has recently ruled in another case with very similar facts and issues. The case of *CIR v.*