

THIRD DIVISION

[G.R. NO. 153204, August 31, 2005]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
MANILA MINING CORPORATION, RESPONDENT.**

DECISION

CARPIO-MORALES, J.:

Being assailed via petition for review on certiorari is the April 12, 2002 Decision^[1] of the Court of Appeals reversing that of the Court of Tax Appeals (CTA)^[2] which granted the claim of respondent, Manila Mining Corporation, in consolidated CTA Case Nos. 4968 and 4991, for refund or issuance of tax credit certificates in the amounts of P5,683,035.04 and P8,173,789.60 representing its input value added tax (VAT) payments for taxable year 1991.

Respondent, a mining corporation duly organized and existing under Philippines laws, is registered with the Bureau of Internal Revenue (BIR) as a VAT-registered enterprise under VAT Registration Certificate No. 32-6-00632.^[3]

In 1991, respondent's sales of gold to the Central Bank (now Bangko Sentral ng Pilipinas) amounted to P200,832,364.70.^[4] On April 22, 1991, July 23, 1991, October 21, 1991 and January 20, 1992, it filed its VAT Returns for the 1st, 2nd, 3rd and 4th quarters of 1991, respectively, with the BIR through the VAT Unit at Revenue District Office No. 47 in East Makati.^[5]

Respondent, relying on a letter dated October 10, 1988 from then BIR Deputy Commissioner Victor Deoferio that:

xxx under Sec. 2 of E.O. 581 as amended, gold sold to the Central Bank is considered an export sale which under Section 100(a)(1) of the NIRC, as amended by E.O. 273, is subject to zero-rated if such sale is made by a VAT-registered person,^[6] (Underscoring supplied)

filed on April 7, 1992 with the Commissioner of Internal Revenue (CIR), through the BIR-VAT Division (BIR-VAT), an application for tax refund/credit of the input VAT it paid from July 1-December 31, 1999 in the amount of P8,173,789.60.

Petitioner subsequently filed on March 5, 1991 another application for tax refund/credit of input VAT it paid the amount of P5,683,035.04 from January 1 - June 30, 1991. As the CIR failed to act upon respondent's application within sixty (60) days from the dates of filing,^[7] it filed on March 22, 1993 a Petition for Review against the CIR before the CTA which docketed it as CTA Case No. 4968,^[8] seeking the issuance of tax credit certificate or refund in the amount of P5,683,035.04 covering its input VAT payments for the 1st and 2nd quarters of 1991. And it filed on

May 24, 1993 another Petition for Review, docketed as CTA Case No. 4991, seeking the issuance of tax credit certificates in the amount of P8,173,789.60 covering its input VAT payments for the 3rd and 4th quarters of 1991.^[9]

To the petition in CTA Case No. 4968 the CIR filed its Answer^[10] admitting that respondent filed its VAT returns for the 1st and 2nd quarters of 1991 and an application for credit/refund of input VAT payment. It, however, specifically denied the veracity of the amounts stated in respondent's VAT returns and application for credit/refund as the same continued to be under investigation.

On May 26, 1993, respondent filed in **CTA Case No. 4968** a "Request for Admissions"^[11] of, among other facts, the following:

x x x

5. The original copies of the Official Receipts and Sales Invoices, reflected in Annex "C" ([Schedule of VAT INPUT on Domestic Purchase of Goods and Services for the quarter ending March 31, 1991] consisting of 24 pages) and Annex C-1 (Summary of Importation, 2 pages) were submitted to BIR-VAT, as required, for domestic purchases of goods and services (1st semester, 1991) for a total net claimable of **P5,268,401.90**; while its VAT input tax paid for importation was **P679,853.00**; (Emphasis and underscoring supplied)

x x x

By Reply^[12] of August 11, 1993, the CIR specifically denied the veracity and accuracy of the amounts indicated in respondent's Request for Admissions,^[13] among other things.

The CIR's Reply, however, was not verified, prompting respondent to file on August 30, 1993 a "SUPPLEMENT (To Annotation of Admission)" alleging that as the reply was not under oath, "an implied admission of [its requests] ar[ose]" as a consequence thereof.^[14]

On September 27, 1993, the CIR filed a Motion to Admit Reply, which Reply was verified and attached to the motion, alleging that its Reply of August 11, 1993 was "submitted within the period for submission thereof, but, however, was incomplete [due to oversight] as to the signature of the administering officer in the verification."^[15]

By Resolution^[16] of February 28, 1994, the CTA, finding that the matters subject of respondent's Request for Admissions are "relevant to the facts stated in the petition for review" and there being an implied admission by the CIR under Section 2 of Rule 26 of the then Revised Rules of Court reading:

Section 2. **Implied Admission.** - Each of the matters of which an admission is requested shall be **deemed admitted** unless xxx the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of

which an admission is requested xxx. (Emphasis and underscoring supplied),

granted respondent's Request for Admissions and denied the CIR's Motion to Admit Reply.

With respect to CTA Case No. 4991, respondent also filed a "Request for Admissions" dated May 27, 1993 of the following facts:

x x x

2. Petitioner's **3rd** and **4th** Quarters 1991 VAT Returns were submitted and filed with the BIR-VAT Divisions on October 21, 1991 and January 20, 1991, respectively and subsequently, on April 7, 1993 petitioner filed and submitted its application for tax credit on VAT paid for the 2nd semester of 1990;

x x x

4. That attached to the transmittal letter [forwarded petitioner's application for tax refund credit] of March 31, 1992 (Annex "B") are the following documents:

- a. Copies of invoices and other supporting documents;
- b. VAT Registration Certificate;
- c. VAT returns for the third and fourth quarters of 1990;
- d. Beginning and ending inventories of raw materials, work-in process, finished goods and materials and supplies;
- e. Zero-rated sales to Central Bank of the Philippines;
- f. Certification that the Company will not file any tax credit with the Board of Investments and Bureau of Customs.

which completely documented the petitioner's claim for refund as required.

5. That the original copies of the Official Receipts and Sales Invoices, reflected in Annex "C" (consisting of 35 pages) and Annex C-1 (Summary of Importation, 2 pages) were submitted to BIR-VAT, as required, to show domestic purchases of goods and services (2nd semester, 1991) which established that the total net claimable of P7,953,816.38; while its VAT input tax paid for importation was P563,503.00;

x x x^[17]

To the Request for Admission the CIR filed a Manifestation and Motion alleging that as the issues had not yet been joined, respondent's request is baseless and premature^[18] under Section 1, Rule 26 of the Revised Rules of Court.^[19]

In the meantime, the CIR filed on August 16, 1993 its Answer,^[20] it averring that sales of gold to the Central Bank may not be legally considered export sales for purposes of Section 100(a) in relation to Section 100(a)(1)^[21] of the Tax Code; and that assuming that a refund is proper, respondent must demonstrate that it

complied with the provisions of Section 204(3) in relation to Section 230 of the Tax Code.^[22]

The CIR subsequently filed on March 25, 1992 its Reply to respondent's Request for Admission in CTA No. 4991, it admitting that respondent filed its VAT returns and VAT applications for tax credit for the 3rd and 4th quarters of 1991, but **specifically denying** the correctness and veracity of the amounts indicated in the schedules and summary of importations, VAT services and goods, the total input and output taxes, including the amount of refund claimed.^[23]

By Resolution^[24] of February 22, 1994, the CTA, in CTA Case No. 4991, admitted the matters covered by respondent's Request for Admission except those specifically denied by the CIR. In the same Resolution, the CTA consolidated Case Nos. 4968 and 4991, they involving the same parties and substantially the same factual and legal issues.

Joint hearings of CTA Case Nos. 4968 and 4991 were thus conducted.

Through its Chief Accountant Danilo Bautista, respondent claimed that in 1991, it sold a total of 20,288.676 ounces of gold to the Central Bank valued at P200,832,364.70, as certified by the Director of the Mint and Refinery Department of the Central Bank^[25] and that in support of its application for refund filed with the BIR, it submitted copies of all invoices and official receipts covering its input VAT payments to the VAT Division of the BIR, "the summary and schedules" of which were certified by its external auditor, the Joaquin Cunanan & Co.^[26]

Senior Audit Manager of Joaquin Cunanan & Co., Irene Ballesteros, who was also presented by respondent, declared that she conducted a special audit work for respondent for the purpose of determining its actual input VAT payments for the second semester of 1991 and examined every original supplier's invoice, official receipts, and other documents supporting the payments;^[27] and that there were no discrepancies or errors between the summaries and schedules of suppliers' invoices prepared by respondent and the VAT invoices she examined.^[28]

Following the filing by respondent of its formal offer of evidence in both cases,^[29] the CTA, by Resolution^[30] of July 18, 1995, admitted the same.

Upon the issue of whether respondent's sales of gold to the BSP during the four quarters of 1991 are subject to 10% VAT under Section 100 of the Tax Code or should be considered zero-rated under paragraph a(2) of said Section 100, the CTA held that said sales are not subject to 10% output VAT, citing *Atlas Consolidated Mining and Development Corporation v. Court of Appeals*,^[31] *Manila Mining Corporation v. Commissioner of Internal Revenue*,^[32] and *Benguet Corporation v. Commissioner of Internal Revenue*.^[33]

Nonetheless, the CTA denied respondent's claim for refund of input VAT for failure to prove that it paid the amounts claimed as such for the year 1991, no sales invoices, receipts or other documents as required under Section 2(c)(1) of Revenue Regulations No. 3-88 having been presented.^[34] The CTA explained that a mere

listing of VAT invoices and receipts, even if certified to have been previously examined by an independent certified public accountant, would not suffice to establish the truthfulness and accuracy of the contents of such invoices and receipts unless offered and actually verified by it (CTA) in accordance with CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, which requires that photocopies of invoices, receipts and other documents covering said accounts of payments be **pre-marked** by the party concerned and **submitted** to the court.^[35]

Respondent's motion for reconsideration^[36] of the CTA decision having been denied by Resolution^[37] of February 11, 1999, respondent brought the case to the Court of Appeals before which it contended that the CTA erred in denying the refund for insufficiency of evidence, it arguing that in light of the admissions by the CIR of the matters subject of it Requests for Admissions, it was relieved of the burden of submitting the purchase invoices and/or receipts to support its claims.^[38]

By Decision^[39] of April 12, 2002, the Court of Appeals reversed the decision of the CTA and granted respondent's claim for refund or issuance of tax credit certificates in the amounts of P5,683,035.04 for CTA Case No. 4968 and P8,173,789.60 for CTA Case No. 4991.

In granting the refund, the appellate court held that there was no need for respondent to present the photocopies of the purchase invoices or receipts evidencing the VAT paid in view of Rule 26, Section 2 of the Revised Rules of Court^[40] and the Resolutions of the CTA holding that the matters requested in respondent's Request for Admissions in CTA No. 4968 were deemed admitted by the CIR^[41] in light of its failure to file a verified reply thereto.

The appellate court further held that the CIR's reliance on the best evidence rule is misplaced since this rule does not apply to matters which have been judicially admitted.^[42]

Hence, the present petition for review,^[43] the CIR arguing that respondent's failure to submit documentary evidence to confirm the veracity of its claims is fatal; and that the CTA, being a court of record, is not expected to go out of its way and dig into the records of the BIR to supply the insufficient evidence presented by a party, and in fact it may set a definite rule that only evidence formally presented will be considered in deciding cases before it.^[44]

Respondent, in its Comment,^[45] avers that it complied with the provisions of Section 2(c)(1) of Revenue Regulation No. 3-88 when it submitted the original receipts and invoices to the BIR, which fact of submission had been deemed admitted by petitioner, as confirmed by the CTA in its Resolutions in both cases granting respondent's Requests for Admissions therein.

To respondent's Comment the Office of the Solicitor General (OSG), on behalf of petitioner, filed its Reply,^[46] arguing that the documents required to be submitted to the BIR under Revenue Regulation No. 3-88 should likewise be presented to the CTA to prove entitlement to input tax credit.^[47] In addition, it argues that, contrary to respondent's position, a certification by an independent Certified Public Accountant