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SECOND DIVISION

[G.R. NO. 145559, July 14, 2006]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BENGUET CORPORATION, RESPONDENT.

D E C I S I O N

GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Commissioner of Internal Revenue seeks the reversal and setting aside of the following Resolutions of the Court of Appeals (CA) in *CA-G.R. SP No. 38413,* to wit:

> 1. **Resolution dated May 10, 2000**[1] insofar as it ordered petitioner to issue a tax credit to respondent Benguet Corporation in the amount of P49,749,223.31 representing input VAT/tax attributable to its sales of gold to the Central Bank (now Bangko Sentral ng Pilipinas or BSP) covering the period from January 1, 1988 to July 31, 1989; and
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> 2. **Resolution dated October 16, 2000**[2] denying petitioner's motion for reconsideration.

The facts, as narrated by the CA in its basic Resolution of May 10, 2000, are:

> [Respondent] is a domestic corporation engaged in 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. 31-0-000027 issued on January 1, 1988. Sometime in January 1988, [respondent] filed an application for zero-rating of its sales of mine products, which application was duly approved by the [petitioner] Commissioner of Internal Revenue.
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> On August 28, 1988, then Deputy Commissioner of Internal Revenue Eufracio D. Santos issued VAT Ruling No. 378-88 which declared that the sale of gold to the Central Bank is considered an export sale and therefore subject to VAT at 0% rate. On December 14, 1988, then Deputy Commissioner Santos also issued Revenue Memorandum Circular (RMC) No. 59-88, again declaring that the sale of gold by a VAT-registered taxpayer to the Central Bank is subject to the zero-rate VAT. No less than five Rulings were subsequently issued by [petitioner] from 1988 to 1990 reiterating and confirming its position that the sale of gold by a VAT-registered taxpayer to the Central Bank is subject to the zero-rate VAT.
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> As a corollary, and in reliance, of the foregoing issuances, [respondent], during the six (6) taxable quarters in question covering the period

January 1, 1988 to July 31, 1989, sold gold to the Central Bank and treated these sales as zero-rated " that is, subject to the 0% VAT. During the same period, [respondent] thus incurred input taxes attributable to said sales to the Central Bank. Consequently, [respondent] filed with the Commissioner of Internal Revenue applications for the issuance of Tax Credit Certificates for input VAT Credits attributable to its export sales - that is, inclusive of direct export sales and sale of gold to the Central Bank corresponding to the same taxable periods, to wit:

AMOUNT OF TAX CREDIT APPLIED FOR	TAXABLE PERIOD
P34,449,817.71	01Jan88 to 30 Apr88
P30,382,666.86	01May88 to 31Jul88
P30,146,774.47	01Aug88 to 31Oct88
P13,467,663.41	01Nov88 to 31Jan89
P 7,030,261.29	01Feb89 to 30Apr89
P18,263,960.28	01May89 to 31Jul89

(CTA Decision dated March 23, 1995; Pages 83-86, rollo)

Meanwhile, on January 23, 1992, then Commissioner Jose U. Ong issued VAT Ruling No. 008-92 declaring and holding that the sales of gold to the Central Bank are considered domestic sales subject to 10% VAT instead of 0% VAT as previously held in BIR Issuances from 1998 to 1990. Subsequently, VAT Ruling No. 59-92, dated April 28, 1992, x x x were issued by [petitioner] reiterating the treatment of sales of gold to the Central Bank as domestic sales, and expressly countenancing the Retroactive application of VAT Ruling No. 008-92 to all such sales made starting January 1, 1988, ratiocinating, ***inter alia***, that the mining companies will not be unduly prejudiced by a retroactive application of VAT Ruling 008-92 because their claim for refund of input taxes are not lost because the same are allowable on its output taxes on the sales of gold to Central Bank; on its output taxes on other sales; and as deduction to income tax under Section 29 of the Tax Code.

On the basis of the aforequoted BIR Issuances, [petitioner] thus treated [respondent's] sales of gold to the Central Bank as domestic sales subject to 10% VAT but allowed [respondent] a total tax credit of only P81,991,810.91 which corresponded to VAT input taxes attributable to its direct export sales ***(CTA Decision dated March 23, 1995; Page 87)***. Notwithstanding this finding of the [petitioner], [respondent] was not refunded the said amounts of tax credit claimed. Thus, to suspend the running of the two-year prescriptive period (Sec. 106, NIRC) for claiming refunds or tax credits, [respondent] instituted x x x consolidated Petitions

for Review with the Court of Tax Appeals, praying for the issuance of "**Tax Credit Certificates**" for the following input VAT credits attributable to export sales transacted during the taxable quarters or periods in question, to wit:

CTA Case Number	Amount of Tax Credit Applied for	Taxable Period
4429	P64,832,374.67	01JAN88 to31JUL88
4495	P43,614,437.88	01AUG88to31JAN89
4575	P23,294,221.77	01FEB89 to31JUL89
	P131,741,034.22 = TOTAL	

Significantly, the total amount of P131,741,034.22, as hereinabove computed, corresponds to the total input VAT credits attributable to export sales made by [respondent] during the taxable periods set forth and therefore, represents a combination of input tax attributable to both (1) direct export sales and (2) sales of gold to the Central Bank. (Words in brackets added).[3]

In a decision dated March 23, 1995,[4] the Court of Tax Appeals (CTA) dismissed respondent's aforementioned consolidated Petitions for Review and denied the whole amount of its claim for tax credit of P131,741,034.22. The tax court held that the alleged prejudice to respondent as a result of the retroactive application of VAT Ruling No. 008-92 issued on January 23, 1992 to the latter's gold sales to the Central Bank (CB) from January 1, 1988 to July 31, 1989 is merely speculative and not actual and imminent so as to proscribe said Ruling's retroactivity. The CTA further held that respondent would not be unduly prejudiced considering that VAT Ruling No. 59-92 which mandates the retroactivity of VAT Ruling No. 008-92 likewise provides for alternative remedies for the recovery of the input VAT.

Its motion for reconsideration having been denied by the tax court, respondent appealed to the CA whereat its recourse was docketed as *CA-G.R. SP No. 38413.*

At first, the CA, in a decision dated May 30, 1996,[5] affirmed *in toto* that of the tax court.

However, upon respondent's motion for reconsideration, the CA, in the herein assailed basic **Resolution dated May 10, 2000,** reversed itself by setting aside its earlier decision of May 30, 1996 and ordering herein petitioner to issue in respondent's favor a tax credit in the amount of P131,741,034.22, to wit:

IN THE LIGHT OF ALL THE FOREGOING, [respondent's] Motion for Reconsideration, x x x as supplemented, is **GRANTED.** The Decision of this Court, dated May 30, 1996, affirming the Decision of the Court of Tax Appeals x x x is **SET ASIDE.** The [petitioner Commissioner of Internal Revenue] is hereby ordered to issue [respondent] a TAX CREDIT in the

amount of P131,741,034.22.

SO ORDERED.

In its reversal action, the CA ruled that the tax credit in the total amount of P131,741,034.22 consists of (1) P81,991,810.91, representing input VAT credits attributable to direct export sales subject to 0% VAT, and (2) P49,749,223.31, representing input VAT attributable to sales of gold to the CB which were subject to 0% when said sales were made in 1988 and 1989. In effect, the CA rejected the retroactive application of VAT Ruling No. 008-92 to the subject gold sales of respondent because of the resulting prejudice to the latter despite the existence of alternative modes for the recovery of the input VAT.

This time, it was petitioner who moved for a reconsideration but his motion was denied by the CA in its subsequent **Resolution of October 16, 2000.**

Hence, petitioner's present recourse assailing only that portion of the CA Resolution of May 10, 2000 allowing respondent the amount of P49,749,223.31 as tax credit corresponding to the input VAT attributable to its sales of gold to the CB for the period January 1, 1988 to July 31, 1989. It is petitioner's sole contention that the CA erred in rejecting the retroactive application of VAT Ruling No. 008-92, dated January 23, 1992, subjecting sales of gold to the CB to 10% VAT to respondent's sales of gold during the period from January 1, 1988 to July 31, 1989. Petitioner posits that, contrary to the ruling of the appellate court, the retroactive application of VAT Ruling No. 008-92 to respondent would not prejudice the latter.

Initially, the Court, in its Resolution of January 24, 2001, [6] denied the Petition for lack of verification and certification against forum shopping. However, upon petitioner's manifestation and motion for reconsideration, the Court reinstated the Petition in its subsequent Resolution of March 5, 2001.[7]

The petition must have to fall.

We start with the well-entrenched rule that rulings and circulars, rules and regulations, promulgated by the Commissioner of Internal Revenue, would have no retroactive application if to so apply them would be prejudicial to the taxpayers.[8]

And this is as it should be, for the Tax Code, specifically Section 246 thereof, is explicit that:

> x x x Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.

There is no question, therefore, as to the prohibition against the retroactive application of the revocation, modification or reversal, as the case maybe, of previously established Bureau on Internal Revenue (BIR) Rulings when the taxpayer's interest would be prejudiced thereby. But even if prejudicial to a taxpayer, retroactive application is still allowed where: (a) a taxpayer deliberately misstates or omits material facts from his return or any document required by the BIR; (b) where subsequent facts gathered by the BIR are materially different from which the ruling is based; and (c) where the taxpayer acted in bad faith.

As admittedly, respondent's case does not fall under any of the above exceptions, what is crucial to determine then is whether the retroactive application of VAT Ruling No. 008-92 would be prejudicial to respondent Benguet Corporation.

The Court resolves the question in the affirmative.

Input VAT or input tax represents the actual payments, costs and expenses incurred by a VAT-registered taxpayer in connection with his purchase of goods and services. Thus, "input tax" means the value-added tax paid by a VAT-registered person/entity in the course of his/its trade or business on the importation of goods or local purchases of goods or services from a VAT-registered person.[9]

On the other hand, when that person or entity sells his/its products or services, the VAT-registered taxpayer generally becomes liable for 10% of the selling price as output VAT or output tax.[10] Hence, "output tax" is the value-added tax on the sale of taxable goods or services by any person registered or required to register under Section 107 of the (old) Tax Code.[11]

The VAT system of taxation allows a VAT-registered taxpayer to recover its input VAT either by (1) passing on the 10% output VAT on the gross selling price or gross receipts, as the case may be, to its buyers, or (2) if the input tax is attributable to the purchase of capital goods or to zero-rated sales, by filing a claim for a refund or tax credit with the BIR.[12]

Simply stated, a taxpayer subject to 10% output VAT on its sales of goods and services may recover its input VAT costs by passing on said costs as output VAT to its buyers of goods and services but it cannot claim the same as a refund or tax credit, while a taxpayer subject to 0% on its sales of goods and services may only recover its input VAT costs by filing a refund or tax credit with the BIR.

Here, the claimed tax credit of input tax amounting to P49,749,223.31 represents the costs or expenses incurred by respondent in connection with its gold production. Relying on BIR Rulings, specifically VAT Ruling No. 378-88, dated August 28, 1988, and VAT Ruling No. 59-88, dated December 14, 1988, both of which declared that sales of gold to the CB are considered export sales subject to 0%, respondent sold gold to the CB from January 1, 1988 to July 31, 1989 without passing on to the latter its input VAT costs, obviously intending to obtain a refund or credit thereof from the BIR at the end of the taxable period. However, by the time respondent applied for refund/credit of its input VAT costs, VAT Ruling No. 008-92 dated January 23, 1992, treating sales of gold to the CB as domestic sales subject to 10% VAT, and VAT Ruling No. 059-92 dated April 28, 1992, retroactively applying said VAT Ruling No. 008-92 to such sales made from January 1, 1988 onwards, were issued. As a