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SECOND DIVISION

[G.R. No. 202534. December 05, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SEMIRARA MINING CORPORATION,** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; VALUE-ADDED TAX (VAT); THE VAT EXEMPTION OF COAL OPERATORS UNDER PRESIDENTIAL DECREE NO. 972, A SPECIAL LAW PROMULGATED TO PROMOTE AN ACCELERATED EXPLORATION, DEVELOPMENT, EXPLOITATION, PRODUCTION AND UTILIZATION OF COAL, HAS NOT BEEN REPEALED.—** As correctly ruled by the CTA, respondent SMC is exempt from payment of VAT under Section 16 of PD 972, and pursuant with the provisions of Section 109(K)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 x x x. In fact, the foregoing tax exemption was incorporated in Section 5.2 of the COC between respondent SMC and the government x x x. As regards the claim of petitioner that respondent SMC's VAT exemption has already been repealed, this Court affirms the CTA decision that respondent SMC's VAT exemption remains intact.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 x x x. 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to promote an accelerated exploration, development, exploitation, production and utilization of coal, was not repealed.

2. **REMEDIAL LAW; COURTS; COURT OF TAX APPEALS (CTA); THE SUPREME COURT WILL NOT LIGHTLY SET ASIDE THE CONCLUSIONS REACHED BY THE CTA WHICH, BY THE VERY NATURE OF ITS FUNCTION OF BEING DEDICATED EXCLUSIVELY TO RESOLUTION OF TAX PROBLEMS, HAS**

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ACCORDINGLY DEVELOPED AN EXPERTISE ON THE SUBJECT, UNLESS THERE HAD BEEN AN ABUSE OR IMPROVIDENT EXERCISE OF AUTHORITY.— [T]he CTA consistently ruled for granting the tax refund claim of respondent SMC and rejecting petitioner CIR's x x x allegations. This Court wishes to note and reiterate the well settled rule that it will not lightly set aside the factual conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Castillo Laman Tan Pantaleon & San Jose for 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

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[1] *Rollo*, pp. 12-42.

[2] Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Ernesto D. Acosta, Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring; *id*. at 43-57.

[3] *Id*. at 58-60.

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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 x 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

. . . . . .

[4] *Id.* at 62.

[5] *Id.* at 45.

[6] *Id.* at 62-63.

[7] *Id.* at 63.

[8] *Id.*

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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 ₱15,292,054.93.[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 ₱15,292,054.93.[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]

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[9] *Id*. at 64.

[10] *Id.* at 65.

[11] *Id.* at 45.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 46.

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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 15,292,054.91, 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]

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[16] *Id.* at 85-86.

[17] *Id.* at 85.

[18] *Id.*

[19] *Id.* at 88-89.

[20] *Id.* at 56.

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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

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[21] *Id*. at 48.

[22] *Id*. at 50.

[23] *Id*. at 53-54.

[24] *Id*. at 53.

[25] *Id*.

[26] *Id*. at 53-54.

[27] *Id*. at 55.

[28] *Id*. at 56.

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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 x 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

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[29] *Id.*

[30] *Id.* at 58-59.

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. . . . . .

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 x 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 x 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. Semirara Mining*

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Corp.[31] is another tax refund case involving petitioner CIR for final VAT withheld for its sales of coal for the period covering July 1, 2006 to December 31, 2006. Faced with similar contentions from the CIR, this Court had the occasion to discuss in depth the reasons why PD No. 972 cannot be impliedly repealed by the repealing clause of R.A. No. 9337, a general law, to wit:[32]

> It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. The repealing clause of RA No. 9337, a general law, did not provide for the express repeal of PD No. 972, a special law. Section 24 of RA No. 9337 pertinently reads:
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> > SEC. 24. *Repealing Clause.-The* following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
> >
> > (A) Section 13 of R.A. No. 6395 on the exemption from value added tax of the National Power Corporation (NPC);
> >
> > (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and
> >
> > (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.
>
> Had Congress intended to withdraw or revoke the tax exemptions under PD No. 972, it would have explicitly mentioned Section 16 of PD No. 972, in the same way that it specifically mentioned Section 13 of RA No. 6395 and Section 6, paragraph 5 of RA No. 9136, as among the laws repealed by RA No. 9337.

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[31] 811 Phil. 113 (2017).

[32] *Id*. at 122-123.

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The CTA also correctly ruled that RA No. 9337 could not have impliedly repealed PD No. 972. In *Mecano v. Commission on Audit,* the Court extensively discussed how repeals by implication operate, to wit:

There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.

Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot [be] enforced without nullifying the other.

Comparing the two laws, it is apparent that neither kind of implied repeal exists in this case. RA No. 9337 does not cover the whole subject matter of PD No. 972 and could not have been intended to substitute the same. There is also no irreconcilable inconsistency or repugnancy between the two laws. While under RA No. 9337, the "sale or importation of coal and natural gas, in whatever form or state" was deleted from the list of VAT exempt transactions, Section 7 of the same law reads:

> 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."

It is important to emphasize that the claim of respondent SMC is expressly granted by pertinent law, and not based on an estoppel on the part of the government. Moreover, while the government is not estopped by the erroneous actions of its agent, it is evident from the foregoing discussion that the previous

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findings of the CIR in BIR Ruling No. 0006-2007 is consistent with the facts and law.

As to petitioner CIR's belated contention that respondent SMC's judicial claim is premature for failing to exhaust all administrative remedies, this Court agrees with the findings of the CTA *En Banc*. There is no reason to consider this judicial intervention premature. The instant case was still filed due to CIR's failure to act on respondent SMC's claim for two (2) years. Also, it is erroneous to raise such claim only after the CTA Division rendered its Decision in favor of respondent SMC.

Notably, the CTA consistently ruled for granting the tax refund claim of respondent SMC and rejecting petitioner CIR's foregoing allegations. This Court wishes to note and reiterate the well settled rule that it will not lightly set aside the factual conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[33]

In this case, this Court finds no reversible error in the decision of the CTA.

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED.** The Decision dated March 22, 2012 and the Resolution dated June 28, 2012 of the CTA *En Banc* in CTA EB No. 752 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), *Perlas-Bernabe, Caguioa,* and *Carandang, JJ.,* concur.

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[33] *CIR v. Semirara Mining Corp.*, *supra* note 31, at 127-128.