

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OCEANAGOLD
(PHILIPPINES) INC.,
Petitioner,

CTA EB NO. 2815
(CTA Case Nos. 10103 & 10183)

Present:

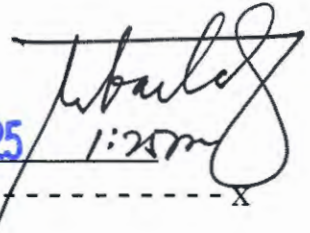
-versus-

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 03 2025



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DECISION

ANGELES, J.:

Before the Court *En Banc* is a *Petition for Review*,¹ filed by petitioner, Oceanagold (Philippines), Inc., appealing the *Decision*² dated June 1, 2023³ and *Resolution*⁴ dated October 13, 2023⁵, both issued by the Court of Tax Appeals (CTA) Special First (1st) Division (Court in Division) in CTA Case Nos. 10103 and 10183. Petitioner prays for the reversal on appeal of the denial of its claim for refund amounting to PhP142,240,851.58, representing excise taxes allegedly paid erroneously by petitioner for the third to fourth quarters of taxable year 2017 or for the period July to December 2017.

¹ En Banc (EB) Docket, pp. 44-70.

² Penned by Associate Justice Catherine T. Manahan, concurred by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

³ EB Docket, pp. 6 - 35.

⁴ Penned by Associate Justice Catherine T. Manahan, concurred by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

⁵ EB Docket, pp. 38 - 41.

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FACTS

Petitioner Oceanagold (Philippines), Inc., formerly Australasian Philippines Mining, Inc., is a corporation duly organized and existing under the laws of the Philippines. It is an assignee-contractor to the Financial or Technical Assistance Agreement (FTAA) dated June 20, 1994 entered into by the Republic of the Philippines and Arimco Mining Corporation.⁶

Respondent is the duly appointed Commissioner of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees, and charges, and enforce all forfeitures, penalties, and fines connected therewith.⁷

On February 4, 2019, petitioner filed a formal claim for refund or tax credit with the Excise LT Audit Division I of the BIR. It sought to recover excise taxes it paid for the four (4) quarters of taxable year (TY) 2017 and for the first quarter of TY 2018 for its removal of copper concentrates and doré bars in the aggregate amount of PhP455,409,873.97.⁸

On October 31, 2019, petitioner received the letter dated October 10, 2019 from the BIR, denying its administrative claim for refund of excise tax.⁹

On July 4, 2019 and October 8, 2019, petitioner filed before the Court of Tax Appeals (CTA) its respective Petitions for Review, praying that respondent be ordered to grant a refund or tax credit that represents the excise tax erroneously paid by petitioner and illegally and wrongfully collected by respondent for the period from July to September 2017 and the period from October to December 2017. The two petitions were respectively docketed as CTA Case No. 10103 and 10183 and were later consolidated and heard before the Special First (1st) Division (Court in Division).¹⁰

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of (1) Atty. Joan D. Adaci-Cattiling¹¹, petitioner's President and Head of Legal and Corporate Affairs; (2) Ms. Heather Bahiwag¹², petitioner's Accounting Superintendent; (3) and Ms. Elaine E. de Guzman¹³, the Court-commissioned Independent Certified Public Accountant.

⁶ Division Docket, Volume III, p. 1383.

⁷ *Id.*, p. 1384.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Division Docket, Volume I, pp. 283 – 304; Volume II, pp. 806 – 807.

¹² Division Docket, Volume I, pp. 510 – 518-A; Volume II, pp. 827 – 828.

¹³ Division Docket, Volume II, pp. 819 – 824, pp. 827 – 828.

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Petitioner argued that it complied with the requirements under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, and Section 11 of Republic Act No. 1125 for the recovery of internal revenue taxes that were erroneously, wrongfully, illegally, or excessively assessed or collected. It further argued that it was exempt from excise tax until the end of its recovery period pursuant to the FTAA and Section 81 of Republic Act No. 7942, otherwise known as the Philippine Mining Act, and Section 236 of the Department of Environmental and Natural Resources (DENR) Administrative Order (DAO) No. 95-23.

Respondent, meanwhile, waived the presentation of its evidence.¹⁴

On June 1, 2023, the Court in Division rendered the assailed *Decision*, as follows:

WHEREFORE, in light of the foregoing considerations, the present consolidated *Petitions for Review* are **DENIED** for lack of merit.

SO ORDERED.¹⁵

The Court in Division ruled that petitioner was exempt from payment of excise tax during the recovery period pursuant to the FTAA and Section 81 of Republic Act No. 7942. It, however, denied the Petition for having failed to prove that the amount collected was detrimental to petitioner's recovery of pre-operating and property expenses.¹⁶

Petitioner moved for reconsideration but it was denied in the *Resolution* dated October 13, 2023, the dispositive portion of which reads as follows:

WHEREFORE, petitioner's *Motion for Reconsideration (of the Decision dated June 1, 2023)* is **DENIED** for lack of merit.

SO ORDERED.¹⁷

In denying the motion, the Court in Division found it relevant that the approval of petitioner's Partial Declaration of Mining Feasibility ("PDMF") was on October 11, 2005, which also referred to petitioner's permit to operate the Didipio Project. Following Section 5(i) of DAO No. 96-40, the Court ruled that petitioner's commercial

¹⁴ Division Docket, Volume III, pp. 1309 – 1310.

¹⁵ *Id.*, p. 1412.

¹⁶ *Id.*, pp. 1391 – 1412.

¹⁷ *Id.*, p. 1448.

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production commenced on October 11, 2005. It then held that petitioner's recovery period ended five (5) years thereafter on October 11, 2010.¹⁸

On November 22, 2023, petitioner filed the instant *Petition for Review*¹⁹, praying to set aside the assailed *Decision* and *Resolution* of the Court in Division and to grant its claim for refund amounting to PhP142,240,851.58, representing excise taxes allegedly paid erroneously by petitioner for the third to fourth quarters of taxable year 2017 or for the period July to December 2017.

Petitioner argued that the date of commencement of the commercial production, which marks the start of the five (5) year recovery period, is on April 1, 2013. Petitioner applied the FTAA and the DAO 96-40 and claimed that the date of "commercial production" can only commence if there is production of sufficient quantity of materials.²⁰

Respondent opposed the petition and insisted that petitioner failed to prove its right to a tax exemption.²¹

ISSUE

Petitioner assigns the following error upon the Court in Division:

Whether or not petitioner's date of commencement of commercial production, which marks the start of the five (5) year period, is on October 11, 2005²²

RULING OF THE COURT

The *Petition for Review* is unmeritorious.

¹⁸ *Id.*, pp. 1445 - 1448.

¹⁹ EB Docket, pp. 44 - 59.

²⁰ EB Docket, pp. 53 - 59.

²¹ EB Docket, pp. 71-78.

²² EB Docket, p. 52.

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The Petition for Review before the Court *En Banc* was timely filed.

Petitioner received a copy of the assailed *Resolution* on October 23, 2023.²³ Petitioner, thus, had fifteen (15) days from such receipt or until November 7, 2023 to avail of the remedies provided by law.²⁴

On November 3, 2023, petitioner moved for the extension of time to file its petition for review,²⁵ which was granted in the *Minute Resolution*²⁶ dated November 7, 2023, which extended the period until November 22, 2023. On November 22, 2023, the instant Petition for Review was timely filed.

There is no compelling reason to reverse or modify the findings of the Court in Division.

The Court in Division ruled that the FTAA explicitly provides that all taxes, including excise tax, collected during the Recovery Period is recoverable during the years they were incurred, provided that the amount collected is detrimental to petitioner's recovery of Pre-operating and Property Expenses.²⁷ The determination of the beginning of the Recovery Period, however, is disputed by petitioner before the Court *En Banc*.

Petitioner argues that the five (5) year Recovery Period should begin on April 1, 2013, which is allegedly the "Date of Commencement of Commercial Production". Petitioner claims that April 1, 2013 is the first day of the calendar quarter following the quarter in which its production amounted to fifteen percent (15%) of the project's initial annual design capacity, in compliance with paragraph 2.14 of the FTAA.

²³ Division Docket, Vol. III, p. 1444.

²⁴ Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b) reads as follows:

Procedure in Civil Cases

Sec. 3. *Who may appeal; period to file petition.*

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

²⁵ EB Docket, pp. 1-3.

²⁶ EB Docket, p. 43.

²⁷ EB Docket, pp. 21-31.

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Consequently, petitioner insists that the five (5) year Recovery Period should end on April 1, 2018.²⁸

A review of the FTAA and the relevant Department of Environment and Natural Resources Administrative Orders (DAO) is necessary to understand the definition of "Recovery Period". The "Recovery Period" is defined under paragraph 11.2, Section XI of the FTAA as the five (5) year period that begins on the "Date of Commencement of Commercial Production", which reads as follows:

11.2 Recovery of Pre-operating Expenses, Property Expenses and Taxes Paid During the Recovery Period. The CONTRACTOR shall have **a period of up to five (5) Contract Years, counted from the Date of Commencement of Commercial Production** within which to recover its: (a) Pre-Operating Expenses; and (b) Property expenses incurred during the period in which Pre-Operating Expenses are recovered, after which period only shall the right of the GOVERNMENT to share in the Net Revenue, as hereinafter defined, accrue.²⁹ (Emphasis supplied)

The above provision should be read together with Section 7 of DAO No. 12-2007, which also defines the "Recovery Period" in the following manner:

Section 7. Recovery of Pre-Operating Expenses. –

- a. Recovery Period. Considering the high risk, high cost and long term nature of an FTAA Mining Operation, the Contractor shall be given an opportunity to recover the expenses during its pre-operating period. After this period, the Government shall receive its rightful share from the national patrimony. **Recovery Period**, as used in this Order, **shall be a maximum of five (5) years or at a date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses, reckoned from the Date of Commencement of Commercial**

²⁸ EB Docket, p. 57.

²⁹ Division Docket, Vol. II, Exhibit "P-2", p. 938.

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Production, whichever comes first. ³⁰
(Emphasis and underscoring supplied)

Evident from the FTAA and DAO No. 12-2007 is the relevance of defining “Commercial Production” to determine the beginning of the Recovery Period. DAO No. 96-40 defined “Commercial Production” as follows:

Sec. 5. Definition of Terms. –

i. **“Commercial Production”** refers to the production of sufficient quantity of minerals of sustained economic viability of mining operations **reckoned from the date of commercial operation as declared by the Contractor or as stated on the feasibility study, whichever comes first.** (Emphasis supplied)

From the cited provisions, the beginning of the Commercial Production commences either (i) on the date of commercial operation as declared by the Contractor or (ii) the date stated on the feasibility study, whichever comes first.

On one hand, the beginning of Commercial Production as stated in the feasibility study may be determined by the review of the Partial Declaration of Mining Feasibility (PDMF) submitted by petitioner to the Mines and Geosciences Bureau (MGB) on March 15, 2005.³¹ The PDMF was approved on October 11, 2005.³² The approval of the PDMF serves as petitioner’s permit to operate the Didipio Project and, consequently, the beginning date of Commercial Production as stated in the feasibility study.

On the other hand, the beginning of Commercial Production as declared by the Contractor, or petitioner in this case, is determined by referring to the FTAA. Paragraph 2.14 of the FTAA defined the “Date of Commencement of Commercial Production” in the following manner:

2.14 “Date of Commencement of Commercial Production” shall mean **the first day of the calendar quarter following the quarter in which production equals fifteen percent (15%) of the project’s initial annual design capacity as outlined in the Declaration of**

³⁰ Division Docket, Vol. II, Exhibit “P-2”, p. 920.

³¹ Division Docket, Vol. II, Exhibit “P-2”, pp. 999–1000.

³² Division Docket, Vol. II, Exhibit “P-2”, pp. 1001–1002.

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Mining Feasibility as hereinafter defined. ³³
(Emphasis supplied)

According to petitioner, it actually produced (15%) production capacity on February 26, 2013 and made reference to its letter dated March 27, 2013 to the DENR, which stated the following:

In this regard, the Declaration of Mining Feasibility provides that the design annual ore throughout is 2,000,000 tonnes. Thus, the 15% threshold for the first calendar quarter of January to March 2013 is 300,000 tonnes.

We are pleased to advise that on February 26, 2013 the Didipio Project was able to mill 301,903 tonnes and achieve the 15% production capacity. With this development, we wish to inform you that **the Date of Commencement of Commercial Production in accordance with Section 2.14 of the FTAA is April 1, 2013**, which is the first day of the second calendar quarter. ³⁴ (Emphasis and underscoring supplied)

Both the date of commercial operation as declared by the Contractor and the date stated on the feasibility study may be identified based on the FTAA and the PDMF, respectively. The beginning of Commercial Production, however, is the date that comes first, as defined in DAO No. 96-40. Considering that the beginning date of Commercial Production on October 11, 2005 as stated in the feasibility study is earlier than petitioner's declaration of April 1, 2013 in its letter to the DENR, the former prevails.

Determination of the commencement of Commercial Production on October 11, 2005 leads to the conclusion that the same date is the reckoning point of the Recovery Period. Consequently, the end of the Recovery Period is five (5) years therefrom or on October 11, 2010. Thus, the Court in Division correctly held that there is no erroneous or illegal collection of excise taxes from petitioner for the period July to December 2017 since the Recovery Period ended on October 11, 2010.

It has been consistently held that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is

³³ Division Docket, Vol. II, Exhibit "P-2", p. 920.

³⁴ Division Docket, Vol. II, Exhibit "P-28", p. 1075.

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construed *strictissimi juris* against the taxpayer-claimant. Similarly, pieces of evidence presented entitling a taxpayer to an exemption is also strictly scrutinized and duly proven. In *Paseo Realty & Development Corporation v. Court of Appeals, et al.*, the Supreme Court ruled:

Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for their support of the government. And since taxes are what we pay for civilized society, or are the lifeblood of the nation, **the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.**³⁵ (Emphasis supplied)

All told, petitioner has not presented any argument that convinces this Court to reverse or modify the findings of the CTA in Division that denied petitioner's claim for refund.

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit. The *Decision dated June 1, 2023* and *Resolution dated October 13, 2023* in CTA Case Nos. 10103 & 10183 are **AFFIRMED**.

SO ORDERED.


HENRY S. ANGELES
Associate Justice

³⁵ GR No. 119286, October 13, 2004.

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WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



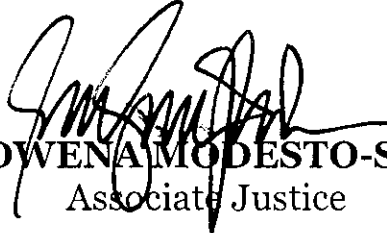
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)

MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO

Presiding Justice