SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	G.R. Nos. 134587 & 134588
	Present:
- versus -	PUNO, *J.*, *Chairman,* AUSTRIA-MARTINEZ, CALLEJO, SR., TINGA, and CHICO-NAZARIO, *JJ.*
BENGUET CORPORATION, *Respondent.*	
	Promulgated:
	July 8, 2005

x----------x

D E C I S I O N

TINGA, *J.*:

This is a petition for the review of a consolidated *Decision* of the Former Fourteenth Division of the Court of Appeals[1] ordering the Commissioner of Internal Revenue to award tax credits to Benguet Corporation in the amount corresponding to the input value added taxes that the latter had incurred in relation to its sale of gold to the Central Bank during the period of 01 August 1989 to 31 July 1991.

Petitioner is the Commissioner of Internal Revenue ("petitioner") acting in his official capacity as head of the Bureau of Internal Revenue (BIR), an attached agency of the Department of Finance,[2] with the authority, *inter alia*, to determine claims for refunds or tax credits as provided by law.[3]

Respondent Benguet Corporation ("respondent") is a domestic corporation organized and existing by virtue of Philippine laws, engaged in the exploration, development and operation of mineral resources, and the sale or marketing thereof to various entities.[4] Respondent is a value added tax (VAT) registered enterprise.[5]

The transactions in question occurred during the period between 1988 and 1991. Under Sec. 99 of the National Internal Revenue Code (NIRC),[6] as amended by Executive Order (E.O.) No. 273 s. 1987, then in effect, any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods is liable for output VAT at rates of either 10% or 0% ("zero-rated") depending on the classification of the transaction under Sec. 100 of the NIRC. Persons registered under the VAT system[7] are allowed to recognize input VAT, or the VAT due from or paid by it in the course of its trade or business on importation of goods or local purchases of goods or service, including lease or use of properties, from a VAT-registered person.[8]

In January of 1988, respondent applied for and was granted by the BIR zero-rated status on its sale of gold to Central Bank.[9] On 28 August 1988, Deputy Commissioner of Internal Revenue Eufracio D. Santos issued VAT Ruling No. 3788-88, which declared that *"[t]he sale of gold to Central Bank is considered as export sale subject to zero-rate pursuant to Section 100*[10] *of the Tax Code, as amended by Executive Order No. 273."* The BIR came out with at least six (6) other issuances[11] reiterating the zero-rating of sale of gold to the Central

Bank, the latest of which is VAT Ruling No. 036-90 dated 14 February 1990.[12]

Relying on its zero-rated status and the above issuances, respondent sold gold to the Central Bank during the period of 1 August 1989 to 31 July 1991 and entered into transactions that resulted in input VAT incurred in relation to the subject sales of gold. It then filed applications for tax refunds/credits corresponding to input VAT for the amounts[13] of ₱46,177,861.12,[14] ₱19,218,738.44,[15] and ₱84,909,247.96.[16] Respondent's applications were either unacted upon or expressly disallowed by petitioner.[17] In addition, petitioner issued a deficiency assessment against respondent when, after applying respondent's creditable input VAT costs against the retroactive 10% VAT levy, there resulted a balance of excess output VAT.[18]

The express disallowance of respondent's application for refunds/credits and the issuance of deficiency assessments against it were based on a BIR ruling–BIR VAT Ruling No. 008-92 dated 23 January 1992–that was issued subsequent to the consummation of the subject sales of gold to the Central Bank which provides that sales of gold to the Central Bank shall not be considered as export sales and thus, shall be subject to 10% VAT. In addition, BIR VAT Ruling No. 008-92 withdrew, modified, and superseded all inconsistent BIR issuances. The relevant portions of the ruling provides, thus:

> 1. In general, for purposes of the term "export sales" only direct export sales and foreign currency denominated sales, shall be qualified for zero-rating.
>
> . . . .
>
> 4. Local sales of goods, which by fiction of law are considered export sales (e.g., the Export Duty Law considers sales of gold to the Central Bank of the Philippines, as export sale). This transaction shall not be considered as export sale for VAT purposes.
>
> . . . .
>
> [A]ll Orders and Memoranda issued by this Office inconsistent herewith are considered withdrawn, modified or superseded." (Emphasis supplied)

The BIR also issued VAT Ruling No. 059-92 dated 28 April 1992 and Revenue Memorandum Order No. 22-92 which decreed that the revocation of VAT Ruling No. 3788-88 by VAT Ruling No. 008-92 would not unduly prejudice mining companies and, thus, could be applied retroactively.[19]

Respondent filed three separate petitions for review with the Court of Tax Appeals (CTA), docketed as CTA Case No. 4945, CTA Case No. 4627, and the consolidated cases of CTA Case Nos. 4686 and 4829.

In the three cases, respondent argued that a retroactive application of BIR VAT Ruling No. 008-92 would violate Sec. 246 of the NIRC, which mandates the non-retroactivity of rulings or circulars issued by the Commissioner of Internal Revenue that would operate to prejudice the taxpayer. Respondent then discussed in detail the manner and extent by which it was prejudiced by this retroactive application.[20] Petitioner on the other hand, maintained that BIR VAT Ruling No. 008-92 is, firstly, not void and entitled to great respect, having been issued by the body charged with the duty of administering the VAT law, and secondly, it may validly be given retroactive effect since it was not prejudicial to respondent.

In three separate decisions,[21] the CTA dismissed respondent's respective petitions. It held, with Presiding Judge Ernesto D. Acosta dissenting, that no prejudice had befallen respondent by virtue of the retroactive application of BIR VAT Ruling No. 008-92, and that, consequently, the application did not violate Sec. 246 of the NIRC.[22]

The CTA decisions were appealed by respondent to the Court of Appeals. The cases were docketed therein as CA-G.R. SP Nos. 37205, 38958, and 39435, and thereafter consolidated. The Court of Appeals, after evaluating the

arguments of the parties, rendered the questioned *Decision* reversing the Court of Tax Appeals insofar as the latter had ruled that BIR VAT Ruling No. 008-92 did not prejudice the respondent and that the same could be given retroactive effect.

In its *Decision*, the appellate court held that respondent suffered financial damage equivalent to the sum of the disapproved claims. It stated that had respondent known that such sales were subject to 10% VAT, which rate was not the prevailing rate at the time of the transactions, respondent would have passed on the cost of the input taxes to the Central Bank. It also ruled that the remedies which the CTA supposed would eliminate any resultant prejudice to respondent were not sufficient palliatives as the monetary values provided in the supposed remedies do not approximate the monetary values of the tax credits that respondent lost after the implementation of the VAT ruling in question. It cited

Manila Mining Corporation v. Commissioner of Internal Revenue,[23] in which the Court of Appeals held[24] that BIR VAT Ruling No. 008-92 cannot be given retroactive effect. Lastly, the Court of Appeals observed that R.A. 7716, the "The New Expanded VAT Law," reveals the intent of the lawmakers with regard to the treatment of sale of gold to the Central Bank since the amended version therein of Sec. 100 of the NIRC expressly provides that the sale of gold to the Bangko Sentral ng Pilipinas is an export sale subject to 0% VAT rate. The appellate court thus allowed respondent's claims, decreeing in its dispositive portion, *viz*:

> WHEREFORE, the appealed decision is hereby REVERSED. The respondent Commissioner of Internal Revenue is ordered to award the following tax credits to petitioner.
>
> 1) In CA-G.R. SP No. 37209 – ₱49,611,914.00
> 2) in CA-G.R. SP No. 38958 - ₱19,218,738.44
> 3) in CA-G.R. SP No. 39435 - ₱84,909,247.96[25]

Dissatisfied with the above ruling, petitioner filed the instant *Petition for Review* questioning the determination of the Court of Appeals that the

retroactive application of the subject issuance was prejudicial to respondent and could not be applied retroactively.

Apart from the central issue on the validity of the retroactive application of VAT Ruling No. 008-92, the question of the validity of the issuance itself has been touched upon in the pleadings, including a reference made by respondent to a Court of Appeals *Decision* holding that the VAT Ruling had no legal basis. [26] For its part, as the party that raised this issue, petitioner spiritedly defends the validity of the issuance.[27] Effectively, however, the question is a non-issue and delving into it would be a needless exercise for, as respondent emphatically pointed out in its *Comment*, "unlike petitioner's formulation of the issues, the only real issue in this case is whether VAT Ruling No. 008-92 which revoked previous rulings of the petitioner which respondent heavily relied upon . . . may be legally applied retroactively to respondent."[28] This Court need not invalidate the BIR issuances, which have the force and effect of law, unless the issue of validity is so crucially at the heart of the controversy that the Court cannot resolve the case without having to strike down the issuances. Clearly, whether the subject VAT ruling may validly be given retrospective effect is the *lis mota* in the case. Put in another but specific fashion, the sole issue to be addressed is whether respondent's sale of gold to the Central Bank during the period when such was classified by BIR issuances as zero-rated could be taxed validly at a 10% rate after the consummation of the transactions involved.

In a long line of cases,[29] this Court has affirmed that the rulings, circular, 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. In fact, both petitioner[30] and respondent[31] agree that the retroactive application of VAT Ruling No. 008-92 is valid only if such application would not be prejudicial to the respondent– pursuant to the explicit mandate under Sec. 246 of the NIRC, thus:

> Sec. 246. Non-retroactivity of rulings.- Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Section or any of the rulings or circulars promulgated by the

> Commissioner 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 on 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 form the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. (Emphasis supplied)

In that regard, petitioner submits that respondent would not be prejudiced by a retroactive application; respondent maintains the contrary. Consequently, the determination of the issue of retroactivity hinges on whether respondent would suffer prejudice from the retroactive application of VAT Ruling No. 008-92.

We agree with the Court of Appeals and the respondent.

To begin with, the determination of whether respondent had suffered prejudice is a factual issue. It is an established rule that in the exercise of its power of review, the Supreme Court is not a trier of facts. Moreover, in the exercise of the Supreme Court's power of review, the findings of facts of the Court of Appeals are conclusive and binding on the Supreme Court.[32] An exception to this rule is when the findings of fact *a quo* are conflicting,[33] as is in this case.

VAT is a percentage tax imposed at every stage of the distribution process on the sale, barter, exchange or lease of goods or properties and rendition of services in the course of trade or business, or the importation of goods.[34] It is an indirect tax, which may be shifted to the buyer, transferee, or lessee of the goods, properties, or services.[35] However, the party directly liable for the payment of the tax is the seller.[36]

In transactions taxed at a 10% rate, when at the end of any given taxable quarter the output VAT exceeds the input VAT, the excess shall be paid to the government; when the input VAT exceeds the output VAT, the excess would be

carried over to VAT liabilities for the succeeding quarter or quarters.[37] On the other hand, transactions which are taxed at zero-rate do not result in any output tax. Input VAT attributable to zero-rated sales could be refunded or credited against other internal revenue taxes at the option of the taxpayer.[38]

To illustrate, in a zero-rated transaction, when a VAT-registered person ("taxpayer") purchases materials from his supplier at ₱80.00, ₱7.30[39] of which was passed on to him by his supplier as the latter's 10% output VAT, the taxpayer is allowed to recover ₱7.30 from the BIR, in addition to other input VAT he had incurred in relation to the zero-rated transaction, through tax credits or refunds. When the taxpayer sells his finished product in a zero-rated transaction, say, for ₱110.00, he is not required to pay any output VAT thereon. In the case of a transaction subject to 10% VAT, the taxpayer is allowed to recover both the input VAT of ₱7.30 which he paid to his supplier and his output VAT of ₱2.70 (10% the ₱30.00 value he has added to the ₱80.00 material) by passing on both costs to the buyer. Thus, the buyer pays the total 10% VAT cost, in this case ₱10.00 on the product.

In both situations, the taxpayer has the option not to carry any VAT cost because in the zero-rated transaction, the taxpayer is allowed to recover input tax from the BIR without need to pay output tax, while in 10% rated VAT, the taxpayer is allowed to pass on both input and output VAT to the buyer. Thus, there is an elemental similarity between the two types of VAT ratings in that the taxpayer has the option not to take on any VAT payment for his transactions by simply exercising his right to pass on the VAT costs in the manner discussed above.

Proceeding from the foregoing, there appears to be no upfront economic difference in changing the sale of gold to the Central Bank from a 0% to 10% VAT rate provided that respondent would be allowed the choice to pass on its VAT costs to the Central Bank. In the instant case, the retroactive application of VAT Ruling No. 008-92 unilaterally forfeited or withdrew this option of

respondent. The adverse effect is that respondent became the unexpected and unwilling debtor to the BIR of the amount equivalent to the total VAT cost of its product, a liability it previously could have recovered from the BIR in a zero-rated scenario or at least passed on to the Central Bank had it known it would have been taxed at a 10% rate. Thus, it is clear that respondent suffered economic prejudice when its consummated sales of gold to the Central Bank were taken out of the zero-rated category. The change in the VAT rating of respondent's transactions with the Central Bank resulted in the twin loss of its exemption from payment of output VAT and its opportunity to recover input VAT, and at the same time subjected it to the 10% VAT *sans* the option to pass on this cost to the Central Bank, with the total prejudice in money terms being equivalent to the 10% VAT levied on its sales of gold to the Central Bank.

Petitioner had made its position hopelessly untenable by arguing that *"the deficiency 10% that may be assessable will only be equal to 1/11th of the amount billed to the [Central Bank] rather than 10% thereof. In short, [respondent] may only be charged based on the tax amount actually and technically passed on to the [Central Bank] as part of the invoiced price."*[40] To the Court, the aforequoted statement is a clear recognition that respondent would suffer prejudice in the "amount actually and technically passed on to the [Central Bank] as part of the invoiced price." In determining the prejudice suffered by respondent, it matters little how the amount charged against respondent is computed,[41] the point is that the amount (equal to 1/11th of the amount billed to the Central Bank) *was* charged against respondent, resulting in damage to the latter.

Petitioner posits that the retroactive application of BIR VAT Ruling No. 008-92 is stripped of any prejudicial effect when viewed in relation to several available options to recoup whatever liabilities respondent may have incurred, *i.e.*, respondent's input VAT may still be used (1) to offset its output VAT on the sales of gold to the Central Bank or on its output VAT on other sales subject to 10% VAT, and (2) as deductions on its income tax under Sec. 29 of the Tax

Code.[42]

On petitioner's first suggested recoupment modality, respondent counters that its other sales subject to 10% VAT are so minimal that this mode is of little value. Indeed, what use would a credit be where there is nothing to set it off against? Moreover, respondent points out that after having been imposed with 10% VAT *sans* the opportunity to pass on the same to the Central Bank, it was issued a deficiency tax assessment because its input VAT tax credits were not enough to offset the retroactive 10% output VAT. The prejudice then experienced by respondent lies in the fact that the tax refunds/credits that it expected to receive had effectively disappeared by virtue of its newfound output VAT liability against which petitioner had offset the expected refund/credit. Additionally, the prejudice to respondent would not simply disappear, as petitioner claims, when a liability (which liability was not there to begin with) is imposed concurrently with an opportunity to reduce, not totally eradicate, the newfound liability. In sum, contrary to petitioner's suggestion, respondent's net income still decreased corresponding to the amount it expected as its refunds/credits and the deficiency assessments against it, which when summed up would be the total cost of the 10% retroactive VAT levied on respondent.

Respondent claims to have incurred further prejudice. In computing its income taxes for the relevant years, the input VAT cost that respondent had paid to its suppliers was not treated by respondent as part of its cost of goods sold, which is deductible from gross income for income tax purposes, but as an asset which could be refunded or applied as payment for other internal revenue taxes. In fact, Revenue Regulation No. 5-87 (VAT Implementing Guidelines), requires input VAT to be recorded not as part of the cost of materials or inventory purchased but as a separate entry called "input taxes," which may then be applied against output VAT, other internal revenue taxes, or refunded as the case may be.[43] In being denied the opportunity to deduct the input VAT from its gross income, respondent's net income was overstated by the amount of its input VAT. This overstatement was assessed tax at the 32% corporate income tax rate, resulting in respondent's overpayment of income taxes in the corresponding amount. Thus, respondent not only lost its right to refund/

credit its input VAT and became liable for deficiency VAT, it also overpaid its income tax in the amount of 32% of its input VAT.

This leads us to the second recourse that petitioner has suggested to offset any resulting prejudice to respondent as a consequence of giving retroactive effect to BIR VAT Ruling No. 008-92. Petitioner submits that granting that respondent has no other sale subject to 10% VAT against which its input taxes may be used in payment, then respondent is constituted as the final entity against which the costs of the tax *passes-on* shall legally stop; hence, the input taxes may be converted as costs available as deduction for income tax purposes. [44]

Even assuming that the right to recover respondent's excess payment of income tax has not yet prescribed, this relief would only address respondent's overpayment of income tax but not the other burdens discussed above. Verily, this remedy is not a feasible option for respondent because the very reason why it was issued a deficiency tax assessment is that its input VAT was not enough to offset its retroactive output VAT. Indeed, the burden of having to go through an unnecessary and cumbersome refund process is prejudice enough. Moreover, there is in fact nothing left to claim as a deduction from income taxes.

From the foregoing it is clear that petitioner's suggested options by which prejudice would be eliminated from a retroactive application of VAT Ruling No. 008-92 are either simply inadequate or grossly unrealistic.

At the time when the subject transactions were consummated, the prevailing BIR regulations relied upon by respondent ordained that gold sales to

the Central Bank were zero-rated. The BIR interpreted Sec. 100 of the NIRC in relation to Sec. 2 of E.O. No. 581 s. 1980 which prescribed that gold sold to the Central Bank shall be considered export and therefore shall be subject to the export and premium duties. In coming out with this interpretation, the BIR also considered Sec. 169 of Central Bank Circular No. 960 which states that all sales of gold to the Central Bank are considered

constructive exports.[45] Respondent should not be faulted for relying on the BIR's interpretation of the said laws and regulations.[46] While it is true, as petitioner alleges, that government is not estopped from collecting taxes which remain unpaid on account of the errors or mistakes of its agents and/or officials and there could be no vested right arising from an erroneous interpretation of law, these principles must give way to exceptions based on and in keeping with the interest of justice and fairplay, as has been done in the instant matter. For, it is primordial that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[47]

The case of *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals*[48] involved a similar factual milieu. There the Commissioner of Internal Revenue issued Memorandum Circular No. 4-71 revoking an earlier circular for being "erroneous for lack of legal basis." When the prior circular was still in effect, petitioner therein relied on it and consummated its transactions on the basis thereof. We held, thus:

> . . . .Petitioner was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. . . .

. . . .

> This Court is not unaware of the well-entrenched principle that the [g]overnment is never estopped from collecting taxes because of mistakes or errors on the part of its agents. But, like other principles of law, this also admits of exceptions in the interest of justice and fairplay. . . .In fact, in the United States, . . . it has been held that the Commissioner [of Internal Revenue] is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom or where there has been a misrepresentation to the taxpayer.[49]

Respondent, in this case, has similarly been put on the receiving end of a grossly unfair deal. Before respondent was entitled to tax refunds or credits based on petitioner's own issuances. Then suddenly, it found itself instead being made to pay deficiency taxes with petitioner's retroactive change in the VAT categorization of respondent's transactions with the Central Bank. This is the sort of unjust treatment of a taxpayer which the law in Sec. 246 of the NIRC abhors and forbids.

WHEREFORE, the petition is DENIED for lack of merit. The *Decision* of the Court of Appeals is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

DANTE O. TINGA
Associate Justice

WE CONCUR:

REYNATO S. PUNO
Associate Justice
Chairman

. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

ATTESTATION

I attest 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's Division.

REYNATO S. PUNO
Associate Justice
Chairman, Second Division

CERTIFICATION

–

–

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairman's Attestation, 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's Division.

HILARIO G. DAVIDE, JR.
Chief Justice

---

[1] Resolving CA-G.R. SP Nos. 37205, 38958, and 39435, promulgated on 10 July 1998; penned by Justice Buenaventura J. Guerrero, concurred in by Justice Portia Aliño-Hormachuelos and Justice Renato C. Dacudao of the Former Fourteenth Division. Rollo in G.R. No. 134588, pp. 38-52. **N.B.:** The two docket numbers assigned to this single petition were the result of petitioner's filing of two motions for extension of time to file petition for review on certiorari, the first, for CA-G.R. No. 38598 by Assistant Solicitor General Azucena Balanon-Corpuz and Associate Solicitor Sarah Jane T. Fernandez docketed herein as G.R. No. 134587, the second for CA-GR No. 37205 by Assistant Solicitor General Ramon G. del Rosario and Solicitor Ma. Theresa G. San Juan, docketed as G.R. No. 134588. There is only one petition, however, since the subject cases of the two motions for extension of time were consolidated at the level of the Court of Appeals and subject of the assailed *Decision*.

[2] *See* E.O. 292 s. 1987, Book IV Title II, Chapter 4, Sec. 16.

[3] Rollo in G.R. No. 134588, pp. 7-8.

[4] *Id*. at 190.

[5] With VAT Registration No. 311-9-000027 issued on 1 January 1988, *id*. at 39.

[6] P.D. No. 1158, s. 1977, prior to its amendment by R.A. No. 7716 (1994) and the enactment of R.A. No. 8284 (1997).

[7] Sec. 107 of the NIRC, as amended by E.O. No. 273 s. 1987.

[8] Sec. 104 of the NIRC, as amended by E.O. No. 273 s. 1987.

[9] Rollo in G.R. No. 134588, p. 39.

[10] Section 100. . . . . [T]he following sales by VAT-registered persons shall be subject to 0%: (1) export sales;

and (2) sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

"Export sales" means the sale and shipment or exportation of goods in the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. . . .

[11] Memorandum Circular No. 59-88 dated 14 December 1988; VAT Ruling No. 074-88 dated 24 March 1988; VAT Ruling No. 075-88 dated 29 March 1988; VAT Ruling No. 379-88 dated 28 August 1988; and VAT Ruling No. 239-89 dated 20 September 1989. Per respondent's Comment, Rollo in G.R. No. 134588, pp. 192-193.

[12] Rollo in G.R. No. 134588, p. 192.

[13] Other amounts not related to the instant petition are no longer discussed.

[14] For the periods of 1 February 1991 to 30 April 1991 and 1 May 1991 to 31 July 1991, subjects of CTA Case No. 4945, and, on appeal, of CA-G.R. SP No. 37209.

[15] For the periods of 1 August 1989 to 31 October 1989 and 1 November 1989 to 31 January 1990, subject of CTA Case No. 4627, and, on appeal, of CA-G.R. SP No. 38958.

[16] For the periods of 1 February 1991 to 30 April 1991; 1 May 1991 to 31 July 1991; 1 February 1990 to 30 April 1990; 1 May 1990 to 31 July 1990; 1 August 1990 to 31 October 1990; 1 November 1991 to 31 January 1991 subjects of CTA Case No. 4686 and CTA Case No. 4829, consolidated on appeal of CA-G.R. SP No. 39435.

[17] Rollo in G.R. No. 134588, pp. 39-44.

[18] Totaling ₱555,486,073.38 for the period of 1988 to 1991, per respondent's *Comment*, Rollo, p. 194. Although it is uncertain whether the deficiency assessments specified therein correspond to the particular transactions subject of the present petition.

[19] Rollo in G.R. No. 134588, p. 195. Petitioner relies heavily on VAT Ruling No. 059-92 which contains a discourse on why the retroactive application of VAT Ruling No. 3788-88 is not prejudicial to mining companies.

[20] CA Decision, Rollo in G.R. No. 134588, pp. 44-45.

[21] The *Decision* in CTA Case No. 4945, promulgated on 26 January 1995, was penned by Associate Judge Ramon O. De Vera, concurred in by Associate Judge Manuel K. Gruba with Dissenting and Concurring Opinion by Presiding Judge Ernesto D. Acosta. The *Decision* in CTA Case No. 4627, promulgated on 23 June 1995, was penned by Associate Judge Ramon O. De Vera and concurred in by Associate Judge Manuel K. Gruba and Presiding Judge Ernesto D. Acosta. (**N.B.:** The issue in this case was on substantiation of tax credits. Consequently, this case was not decided on the issue of retroactive application of VAT Ruling No. 008-92.) The *Decision* in the consolidated cases of CTA Case Nos. 4686 and 4829, promulgated on 27 September 1992, was penned by Associate Judge Ramon O. De Vera, concurred in by Associate Judge Manuel K. Gruba with Dissenting Opinion by Presiding Judge Ernesto D. Acosta.

[22] Other matters unrelated to the matter subject of the petition are no longer discussed.

[23] CA-G.R. SP No. 38287.

[24] Promulgated by the Special Fifth Division composed of Justice Pedro Ramirez, Justice Maximo Asuncion, and *ponente* Justice Eduardo Montenegro.

[25] Rollo in G.R. No. 134588, p. 52.

[26] Respondent's *Memorandum*, Rollo in G.R. No. 134587, p. 41.

[27] Rollo in G.R. No. 134588, pp. 18-25.

[28] *Id.* at 199.

[29] Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. No. 117982, 06 February 1997, 267 SCRA 557, 564, *citing* Commissioner of Internal Revenue v. Telefunken Semiconductor Philippines, Inc., G.R. No. 103915, 23 October 1995, 249 SCRA 401; Bank of America v. Court of Appeals, G.R. No. 103092, 21 July 1994, 234 SCRA 302; Commissioner of Internal Revenue v. CTA, G.R. No. L-44007, 20 March 1991, 195 SCRA 444; Commissioner of Internal Revenue v. Mega General Merchandising Corp., G.R. No. 69136, 30 September 1988, 166 SCRA 166; Commissioner of Internal Revenue v. Burroughs, G.R. No. 66653, 19 June 1986, 142 SCRA 324; ABS-CBN v. CTA, G.R. No. 52306, 12 October 1981, 108 SCRA 142.

[30] Rollo in G.R. No. 134588, p. 21.

[31] *Id.* at 197.

[32] The Philippine American Life and General Insurance Co. v. Gramaje, G.R. No. 156963, 11 November 2004 *citing* Pestaño v. Sumayang, G.R. No. 139875, 04 December 2000, 346 SCRA 870, 879.

[33] *Ibid.*

[34] H. De Leon, The Law On Transfer and Business Taxation (2000 ed.), p. 135.

[35] Sec. 4.99-2, Revenue Regulation No. 7-95 (1995).

[36] *Supra* note 34 at 143.

[37] Sec. 112 (B) of the NIRC, as amended.

[38] Sec. 112 (B) of the NIRC, as amended.

[39] Rounded off to the first decimal for purposes of simplicity.

[40] Rollo, p. 29.

[41] Whether it is at 10% of invoice price for instances when VAT is billed separately in the invoice or 1/11 of the invoice price for instances when the VAT is not billed by the seller separately in the invoice, in which case the invoice price is deemed to have included the VAT.

[42] Rollo in G.R. No. 134588, p. 26.

[43] Thus, per the illustration in Revenue Regulation No. 5-87, where "A" sold on account to "B" 100 pieces of merchandise "X" for ₱1,000.00 plus VAT of ₱100.00, B should record in his subsidiary purchase book the purchases in the amount of ₱1,000.00 and input taxes amounting to ₱100.00. The journal entry should be:

Dr.	Purchase		₱1,000.00
	Input Taxes		₱ 100.00
	Cr.	Accounts payable	₱1,100.00

[44] Rollo in G.R. No. 134588, p. 28.

[45] Circular No. 960 dated January 30, 1984.

"Sec. 169. Privilege of export oriented firms. Gold producers shall qualify as export-oriented firms even if their entire output is sold to the Central Bank.

"CIRCULAR No. 1301 Series of 1991 dated August 7, 1991

With reference to Section 169 of Central Bank Circular No. 960 dated October 21, 1983, it is hereby stated, for clarification purposes, that all sales of gold to the Central Bank are considered constructive exports."

Section 107(c), C.B. Circular No. 1318 dated January 3, 1992

"All gold sold to Central Bank by primary and secondary gold producers and small scale miners are considered constructive when appropriate."

[46] In his dissenting opinion in CTA Cases Nos. 4686 & 4829, Presiding Judge (now Justice) Ernesto D. Acosta elucidated on the rationale underlying the CB Circulars, thus:

> The policy of the Central Bank is to conserve this metal (gold) through purchase at competitive prices, giving incentives to producers and its prudent use through regulations (Section 162, CB Circular No. 960). Towards this end, certain gold producers are required to sell their entire production of gold to the Central Bank (Section 171, CB Circular No. 960) and no person shall export or bring out, or attempt to export or bring out of the Philippines, gold and/or gold-bearing materials, in any shape, form and quantity without prior approval from the CB Export Department. (Section 107, CB Circular No. 1318). It is also in line with aforementioned policy that gold producers are given incentives such as considering their sales to CB as exports.

[47] Article 19, Civil Code.

[48] 195 Phil. 33 (1981).

[49] *Id.* at 41, 43-44.