REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

BANGKO SENTRAL NG PILIPINAS,	**C.T.A. CASE NO. 7788**
Petitioner,	Members:
- versus -	CASTAÑEDA, Chairperson, UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	FEB 2 4 2010 8:25 a.m.

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

DECISION

PALANCA-ENRIQUEZ, J.:

Gold extract, as metallic mineral, is subject to a 2% excise tax *(Section 151(3)(b), NIRC of 1997, as amended)*. Under *RA 7076*, otherwise known as the *"People's Small Scale Mining Act of 1991"*, the holder of a small-scale mining contract has the duty and obligation to pay all taxes that are now or may thereafter be provided by law. However, should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall

Exh.	OR #	US$	Exhange Rate *(per Exh. MMMM)*	PhP
OOOO-92	1488			9,932,570.16
OOOO-93	1491	1,994,160.00	56.147	111,966,101.52
OOOO-94	1489			9,932,570.16
OOOO-95	1492	2,068,941.00	56.147	116,164,830.33
OOOO-96	1486			10,305,041.54
OOOO-97	1493	2,068,941.00	56.147	116,164,830.33
OOOO-98	1487			10,305,041.54
OOOO-99	1494	134,131.00	56.147	7,531,053.26
OOOO-100	1484			668,083.59
OOOO-101	1495	134,131.00	56.147	7,531,053.26
OOOO-102	1485			668,083.59
OOOO-103	1496	118,700.00	56.147	6,664,648.90
OOOO-104	1482			591,224.41
OOOO-105	1497	118,700.00	56.147	6,664,648.90
OOOO-106	1483			591,224.41
OOOO-107	1498	1,774.80	56.147	99,649.70
OOOO-108	1481			8,839.99
OOOO-109	1508	1,994,160.00	56.207	112,085,751.12
OOOO-110	1499			9,857,042.94
OOOO-111	1509	1,994,160.00	56.207	112,085,751.12
OOOO-112	1500			9,867,042.94
OOOO-113	1510	2,068,941.00	56.207	116,288,966.79
OOOO-114	1506			10,226,682.05
OOOO-115	1511	2,068,941.00	56.207	116,288,966.79
OOOO-116	1507			10,226,682.05
OOOO-117	1512	134,131.00	56.207	7,539,101.12
OOOO-118	1504			663,003.48
OOOO-119	1513	134,131.00	56.207	7,539,101.12
OOOO-120	1503			663,003.48
OOOO-121	1514	118,700.00	56.207	6,671,770.90
OOOO-122	1501			586,728.75
OOOO-123	1515	118,700.00	56.207	6,671,770.90
OOOO-124	1502			586,728.75
OOOO-125	1516	1,774.80	56.207	99,756.18
OOOO-126	1505			8,772.77
OOOO-127	1518			673,367.98
OOOO-128	1534	1,774.80	56.055	99,486.41
OOOO-129	1517			10,068.20
OOOO-130	1526	1,994,160.00	56.055	111,782,638.80
OOOO-131	1525			11,312,582.09
OOOO-132	1527	1,994,160.00	56.055	111,782,638.80
OOOO-133	1522			11,312,582.09
OOOO-134	1528	2,068,941.00	56.055	115,974,487.76
OOOO-135	1524			11,736,803.92
OOOO-136	1529	2,068,941.00	56.055	115,974,487.76
OOOO-137	1523			11,736,803.92
OOOO-138	1530	134,131.00	56.055	7,518,713.21
OOOO-139	1521			760,905.82
OOOO-140	1531	134,131.00	56.055	7,518,713.21
OOOO-141	1520			760,905.82
OOOO-142	1532	118,700.00	56.055	6,653,728.50
OOOO-143	1519			673,367.98
OOOO-144	1533	118,700.00	56.055	6,653,728.50
TOTAL				**3,130,907,752.25**

be liable of the tax due thereon *(Section 130(A)(1), 2nd par., NIRC of 1997, as amended)*.

THE CASE

This is a Petition For Review filed by the Bangko Sentral ng Pilipinas (hereafter "petitioner BSP") praying for the reversal and setting aside of the Decision of the Commissioner of Internal Revenue dated April 2, 2008, denying petitioner's Protest Letter dated January 18, 2008, and for the revocation and cancellation of Assessment Notice No. LTFOD-2007-11-NG-071 dated December 20, 2007 for deficiency excise tax for taxable years 2001 to 2006 in the amount of P4,635,362,821.04.

THE PARTIES

Petitioner BSP is a wholly owned government corporation exercising government powers, created pursuant to *RA 7653*, otherwise known as "The New Central Bank Act". As a governmental entity, petitioner provides policy directions in the area of money, banking and credit. It has supervision over the operations of banks and exercises such regulatory powers, as provided in *RA 7653* and other pertinent laws, over the operation of finance companies and non-banking financial institutions performing quasi-banking functions. Its primary objective is to maintain price stability conducive to a balanced and sustainable growth of the economy. It also promotes and maintains monetary stability and

convertibility of peso. In order to achieve its primary objective of price stability, the BSP may buy and sell gold in any form, subject to such regulations as the Monetary Board may issue.

Petitioner is a registered taxpayer with Tax Identification No. 000-354-790-000, with principal place of business at corner A. Mabini & P. Ocampo, Sr. Streets, Malate, Manila. It was issued a Bureau of Internal Revenue ("BIR") Certificate of Registration OCN 1RC0000252496 dated June 30, 1996 by the BIR Revenue District Office No. 003 – Ermita/Malate/Intramuros, Revenue Region No. 006, Manila.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), with authority to administer and enforce *RA 8424*, otherwise known as *"The Tax Reform Act of 1997", as amended*, including all other tax laws and its implementing rules and regulations, with office address at the National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts, as stipulated by the parties, are as follows:

> "1.6. On 19 November 2007, BSP received a copy of the CIR's Notice of Discrepancy dated 15 November 2007. The Notice of Discrepancy reads:
>
> > 'This has reference to the verification made by this Office relative to your purchases of gold from various small scale miners for the years 2001 up to 2006.

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> In this connection, please be informed that the aforementioned articles are subject to excise tax under Section 151 (A) (3) (b) of the 1997 National Internal Revenue Code. Records available in this Office, however, failed to show any excise tax payment made by your suppliers of the said purchased article.
>
> In view thereof, as possessor of the untaxed article, you are liable to pay the excise tax due thereon in the amount of Four Billion Five Hundred Ninety Six Million Thirteen Thousand Nine Hundred Forty Nine Pesos and 30/100 (P4,596,013,949.30), inclusive of increments, pursuant to Section 130 (A) (1) paragraph 2 of the same Code. The complete details covering the aforementioned assessment are shown in the accompanying Annex "A" of this Notice.
>
> The 25% surcharge has been imposed pursuant to the provisions of Section 248 (A) of the National Internal Revenue Code of 1997.
>
> The 20% interest has been imposed pursuant to the provisions of Section 249 (b) of the National Internal Revenue Code of 1997.
>
> xxx xxx'

1.7. On 21 December 2007, BSP received Assessment Notice No. LTFOD-2007-11-NG-071 dated 20 December 2007 together with the Formal Letter of Demand of even date demanding payment of the aggregate amount of FOUR BILLION SIX HUNDRED THIRTY FIVE MILLION THREE HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED TWENTY ONE AND 04/100 (PHP4,635,362,821.04). The Formal Letter of Demand and the Assessment Notice provided:

'Please be informed that after verification made by this Office there is found due from you (sic) a deficiency tax

in the amount of Four Billion Six Hundred Thirty Five Million Three Hundred Sixty Two Thousand Eight Hundred Twenty One and 04/100 (P4,635,362,821.04), inclusive of increments, imposed on your purchases of gold from various small scale miners for the years 2001 up to 2006. Records available in this Office, however, failed to show any excise tax payments made by your suppliers of the said purchased article, hence, as possessor of the untaxed article, you are liable to pay the aforesaid deficiency excise tax due pursuant to Section 130 (A)(1) paragraph 2 of the same Code.

The assessment was computed pursuant to the provisions under Section 151(A)(3)(b) of the 1997 National Internal Revenue Code. The complete details covering the aforementioned assessment are shown in the accompanying Annex "A" of this Notice.

The 25 % surcharge has been imposed pursuant to the provisions of Section 248(A) of the National Internal Revenue Code of 1997.

The 20% interest has been imposed pursuant to the provisions of Section 249(b) of the National Internal Revenue Code of 1997.

In view thereof, you are requested to pay the abovementioned deficiency excise tax liability through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.'

AUDIT RESULT/ASSESSMENT NOTICE

Basic----------	P2,360,932,304.24
Surcharge----------	590,233,076.06
Interest----------	1,684,197,440.74
Compromise Penalty----------	
Total	P4,635,362,821.04

1.8. On 18 January 2008, BSP, through its external counsel, V.C. Mamalateo & Associates, filed before the Office of the Commissioner a timely protest against the assessment, which was indorsed to the Appellate Division of

the BIR on 24 January 2008. The arguments advanced were as follows:

'xxx xxx

1. Sale of gold by small-scale miners to BSP is not subject to excise taxes.

The basis of the deficiency excise tax assessment cited by the BIR is Section 130(A)(1) of the National Internal Revenue Code of 1997, as amended ('1997 Tax Code, as amended') which in part provides that 'should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.'

In this regard, it should be noted that above-cited law finds no application with respect to the removal of the domestic product (gold) from the mine site by a small-scale contractor. The existing rules implementing Republic Act No. 7076, a special law, otherwise known as the 'People's Small-Scale Mining Act of 1991', dated June 27, 1991, exempt specifically gold sold to BSP from excise taxes, to wit:

'CHAPTER VI
FISCAL AND REGULATORY
PROVISIONS

'SEC.26. Payment of Taxes, Government Production.

The Small-Scale Mining contractor shall pay to the government the following:

xxx xxx

> 26.6. Excise Tax except gold sold to Central Bank which are considered for export; xxx (Section 26.2, DENR Administrative Order No. 34, July 14, 1992).
>
> DENR Administrative Order No. 34 implements the provisions of Republic Act No. 7076 (Annex "C"). It is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, are entitled to great respect, and have in their favor a presumption of legality (Philippine Administrative Law, C.L. Cruz, 1998 edition, citing Sierra Madre Trust vs. Secretary of Agriculture and Natural Resources, 121 SCRA 384; Austrias Sugar, Inc. vs. Commissioner of Customs, 29 SCRA 617; Antique Sawmill, Inc. vs. Zayco, et al., 17 SCRA 316; and Espanol vs. Philippine Veterans Administration 137 SCRA 314).
>
> Since the Tax Code is a general law, while Republic Act No. 7076 is a special law, the latter shall, therefore, prevail over the former, specifically with respect to the transaction between the BSP and small-scale miners.
>
> The rationale for said exemption can be gleaned from the important recognition of the government of the vital role of said transaction in achieving the mandate of BSP under its Charter, i.e., Republic Act No. 7653, which is to preserve international monetary stability. One measure in order to fulfill this mandate is through the special obligations imposed by law upon BSP and small-scale miners to buy and sell gold, respectively. Note that the BSP is required to exercise its powers to preserve the international value of the peso and to maintain

its convertibility into other freely convertible currencies, primarily for, although not necessarily limited to, current payments for foreign trade receivables (Section 64, Republic Act No. 7653). Thus, in order to achieve its primary objective of maintaining price stability conducive to a balanced and sustainable economic growth (Section 3, Republic Act No. 7653), it engages in the purchase of gold as one effective instrument to ensure the achievement of its objective (Section 69, Republic Act No. 7653). Under the law, the purchase and sale of gold shall be made in the national currency at the prevailing international market price.

The flow of gold transaction of the BSP may be summarized as follows:

1. Gold is purchased from small-scale miners (i.e., gold panners) thru Mint Refinery Operations Department ("MROD") and the gold buying stations nationwide;

2. Purchased Gold is recorded as 'Gold for Refining';

3. Issuance for production into gold refinery bars is recorded as 'Plant-Inventories-Work-in-Progress-gold';

4. Finished gold refinery bars are transferred to and recorded as 'Gold in Bullion Vault';

5. 'Gold in Bullion Vault' becomes part of the International Reserves of the Philippines;

6. Upon approval of the BSP's Monetary Board, Gold in Bullion Vault are shipped abroad, specifically to Bank of

England, and recorded as 'Gold with Foreign Financial Institutions; and

7. Gold in 'Gold with FFI' are being sold abroad to other Foreign Financial Institutions.

Based on December 31, 2007 figure, BSP's Gold Reserve is equivalent to 2,069,370,868 fine troy ounces ("FTO"). Per BSP's record, about 61% of holdings are with the Foreign Financial Institution ("FFI's"), while 39% are at the Bullion Vault of the MROD-BSP, as at year-end (Annex "D"). It is important to emphasize that since production is a continuing process, transfers from the Bullion Vault to the FFIs are being DONE at various dates during the year. Kindly refer to Annexes "E", "F-1" and "F-2" for sample documents on gold location swap/sale of gold to foreign counterparty.

Based on the above, since the law exempts the small-scale contractor from excise tax, who is the person principally liable thereto, it follows that BSP, as the buyer thereof and person secondarily liable, shall not be subject to excise tax, since the goods are considered by law, as for export and are actually exported by BSP in the fulfillment of its mandate under its Charter.

Subjecting the transaction to excise taxes would undoubtedly bear a negative impact on BSP's performance of its function in maintaining price stability, and more specifically, its role to preserve our international monetary stability. The imposition of taxes, whether on the small-scale miners or the BSP itself, would unnecessarily increase the cost of gold forming part of our country's international reserves. As mentioned above, the

purchase and sale of gold, under the law, shall be made in the national currency at the prevailing international market price as determined by the Monetary Board (Section 69, Republic Act No. 7653).

Moreover, it is important to note that the Supreme Court has held that the rule on strict construction of tax statutes does not apply in case of tax exemptions in favor of a government political subdivision or instrumentality because the basis for applying the rule of strict construction to statutory provisions granting tax exemptions or deductions – which is to minimize differential treatment and foster impartiality, fairness and equality of treatment among taxpayers – does not apply in the case of exemptions running to the benefit of the government itself or its agencies. Provisions granting exemptions to government agencies may be construed liberally, in favor of non-taxability of such agencies (DOJ Opinion No. 47, x. 1992, dated April 14, 1992, citing Maceda vs. Macaraig, Jr., 197 SCRA 771, citing Cooley on the Law of Taxation, 4th edition).

2. Gold sold by small scale miners to BSP are not subject to 2% excise tax since they are subsequently exported by BSP and not meant for domestic sale or consumption.

The law is clear. Section 129 of the 1997 Tax Code, as amended expressly provides and we quote:

'Sec. 129. Goods Subject to Excise Taxes. – Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. xxx'

> Based on the above-quoted provision, excise tax applies only to goods produced in the Philippines for domestic sale or consumption. In the case of gold panned by small-scale miner or contractors, these are required to be sold to the Bangko Sentral ng Pilipinas under Republic Act No. 7076, otherwise known as the 'People's Small-Scale Mining Act of 1991', to wit:
>
> 'Sec. 17. Sale of Gold. – all gold produced by small scale miners in any mineral area shall be sold to the Central Bank, or its duly authorized representative, which shall buy it at prices competitive with those prevailing in the world market regardless of volume or weight. xxx (Section 17, Republic Act No. 7076).
>
> xxx xxx'

1.9. On 25 January 2008, the Appellate Division requested the entire records/docket of the case from the LT Field Operations Division for the resolution of the legal issue involved. Then, on 18 February 2008, the LT Field Operations Division issued a memorandum dated 15 February 2008 in response to BSP's protest and transmitted the entire records/docket to the Appellate Division. The Memorandum is quoted, thus:

> 'This refers to your Memo dated January 25, 2008 requesting for the entire record/docket bearing on the subject assessment, in relation to the Reference Slip signed by Atty. Gealdina E. Reyes, Chief of Staff OCIR, dated January 23, 2008 relative to the protest filed by Bangko Sentral ng Pilipinas dated February 4, 2008, thru its legal counsel Mamalateo & Associates.
>
> In compliance thereto, transmitted herewith is the entire records/docket (consisting of 33 pages) of the mentioned taxpayer relative to its deficiency excise tax assessment for the

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taxable years 2001 to 2006 amounting to P4,635,362,281.04, inclusive of increments.

It is informed that we are currently preparing a Revised Formal Letter of Demand after securing from Mines and Geosciences Bureau last month the complete records of Panned Gold Purchases of BSP; and after evaluating BSP's legal counsel arguments as without merit based on the following:

ISSUE: 1. Sale of gold by Small-Scale Miners to BSP is not subject to excise tax.

BSP's Position:

BSP, thru their legal counsel Mamalateo & Associates, cited in their protest letter that under the DENR Administrative Order No. 34, July 14, 1992, rules implementing Republic Act No. 7076, a special law, otherwise known as the 'People's Small-Scale Mining Act of 1997' dated June 27, 1991, exempt specially gold sold to BSP from excise taxes, to wit:

CHAPTER VI
FISCAL AND REGULATORY PROVISIONS

Sec. 26. Payment of Taxes, Government Production Share, The Small-Scale Mining contractor shall pay to the government the following:

xxx xxx

26.6. Excise tax except gold sold to Central Bank which are considered for export;"

LTFOD's Position:

After taking into account the BSP's position on the issue, it is to be noted that nowhere in the provision of RA No. 7076 does

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it state any exemption from excise tax. As such, the above-cited basis of the exemption of the sale of gold to the BSP by SSM is found inconsistent and not in harmony with the law it seeks to apply and implement. The rules and regulations issued by administrative officials to implement a law cannot go beyond the terms and provisions of the latter; thus, the exemption of the sale of gold to the BSP by SSM cannot be invoked.

ISSUE 2: Gold sold by Small-Scale Miners to BSP is not subject to 2% excise tax since it is subsequently exported by BSP and not meant for domestic sale or consumption.
BSP's position:

BSP invoked the general provisions of Section 129 of the 1997 NIRC which states that 'Excise taxes apply to goods manufactured or produced in the Philippine for domestic sale or consumption or for any other disposition and to things imported. xxx'

LTFOD's Position:

In reply to BSP's contention, it is informed that Section 130(D) of the 1997 NIRC states that:

Credit for Excise Tax on Goods Actually Exported. – When goods locally produced or manufactured are removed and actually exported xxx: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

In view of all the foregoing, the aforementioned deficiency excise tax assessment is therefore valid, executory and

demandable in accordance with the provisions of the National Internal Revenue Code of 1997 and its implementing rules and regulations governing excise taxes as well as RA No. 7076 in relation to RA No. 7942 (Philippine Mining Act of 1995)."

1.10. In its Decision dated 02 April 2008, the CIR 'DENIED' BSP's protest against Assessment Notice No. LTFOD-2007-11-NG-071 and ordered it to pay the aggregate amount of Php4,635,362,821.04.

1.10.1 The CIR cites §130 (A) (1), in relation to §151 (A) (3) (b) of RA No. 8424, as amended, as the applicable tax provisions in this case. It provides as follows:

'Section 130. Filing of Return and Payment of Excise Tax on Domestic Products.

(A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. -

(1.) Persons Liable to File a Return. – Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: Provided, however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim.

Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

Section 151. Mineral Products. –

> (A) Rates of Tax. – There shall be levied, assessed and collected on minerals, mineral products and quarry resources, excise tax as follows:
>
> (1) xxx xxx
>
> (3) On all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and custom duties, net of excise tax and value-added tax, in the case of importation, in accordance with the following schedule:
>
> (a) xxx xxx
>
> (b) Gold and chromite, two percent (2%).'
>
> 2. CIR's Answer
>
> 2.1 Furthermore, the source of the factual basis was clearly identified in the assessment. It was stated in 'Annex A' therein that it was sourced from conclusive data obtained from the Mineral Economics, Information and Publication Division of the Mines and Geosciences Bureau where year by year gold purchases by petitioner from small scale miners are duly reported and made of public record. The said annual breakdown provided by the Mines and Geosciences Bureau is also indicated therein (paragraph 11 of Answer)."

In his "Answer", respondent averred the following: petitioner was not denied due process in the issuance of the assailed assessment, the same having been issued in accordance with law, and is therefore valid in all other respects; the sale of gold by small-scale miners to the BSP is subject to excise tax and failure to pay the same renders the possessor, herein petitioner, liable thereto; the bases of the assessments are the

provisions of the *NIRC of 1997, as amended*, and not *RA 7076*, or specifically, *Section 26.6 of DENR Administrative Order No. 34, dated July 14, 1992*; granting for the sake of argument that *DENR Administrative Order No. 34* exempts from payment of excise tax gold sold to Central Bank which are considered for export, nevertheless, the law itself, *RA 7076,* does not provide for any exemption from payment of excise tax; well-settled is the rule that administrative regulations must be in harmony with the provisions of the law; in case of discrepancy between the basic law and the implementing rule or regulation, the former prevails; finally, since no return was filed and no payment was made by petitioner on the subject transactions, the imposition of civil penalties and interest is proper in this case, pursuant to *Sections 248 and 249 of the NIRC of 1997, as amended.*

Upon manifestation of counsel for both parties that the issues are purely legal, the parties moved that the case be submitted for decision without trial, which the Court granted.

Consequently, the parties were granted thirty (30) days from notice, within which to file their simultaneous memoranda; afterwhich, the case shall be deemed submitted for decision.

Petitioner having filed its Memorandum on March 13, 2009, and respondent on March 20, 2009, the case was deemed submitted for decision on April 17, 2009.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE SALE OF GOLD BY SMALL-SCALE MINERS TO BSP IS SUBJECT TO EXCISE TAX.

II

WHETHER OR NOT THE BSP IS SUBJECT TO EXCISE TAX AS THE POSSESSOR OF THE UNTAXED GOLD PURCHASED FROM SMALL-SCALE MINERS.

III

WHETHER OR NOT (1) THE ASSESSMENT MADE BY THE LT FIELD OPERATIONS DIVISION OF THE BIR IN THE AMOUNT OF PHP4,635,362,821.04 STATED THE FACTUAL BASIS UPON WHICH IT WAS MADE IN VIOLATION OF §228 OF RA NO. 8424, AS AMENDED; AND (2) THERE WAS A LETTER OF AUTHORITY ISSUED THEREFORE FOR THE EXAMINATION OF BSP'S BOOKS OF ACCOUNTS AND ACCOUNTING RECORDS IN ACCORDANCE WITH REVENUE AUDIT MEMORANDUM ORDER NO. 1-00.

IV

WHETHER OR NOT THE BSP SHOULD BE HELD LIABLE FOR THE 25% SURCHARGE AND 20% INTEREST IN THE AMOUNTS OF PHP590,233,076.06 AND PHP1,684,197,440.74, RESPECTIVELY, FROM 2001-2006.

Principal Issues

The foregoing issues boil down to three principal issues: (1) whether or not the assessment made by the respondent stated the factual basis upon which it was made; (2) whether or not petitioner is liable for excise tax; and (3) whether or not petitioner should be held liable for the 25% surcharge and 20% interest.

THE COURT'S RULING

The petition is partly meritorious.

First Issue

The Assessment Stated The Factual Basis Upon Which It Was Based

Petitioner contends that Assessment Notice No. LTFOD-2007-11-NG-071 is clearly void for non-compliance with the due process requirements of *Section 228 of RA 8424, as amended*, since it has not made clear to BSP the source of the figures or amount being assessed by the CIR.

Petitioner's contention is devoid of merit.

At the outset, it must be emphasized that the above argument of petitioner was raised for the first time in this Court. It was never raised at the administrative level. The Protest Letter dated January 18, 2008 was anchored only on the following grounds: (1) Sale of gold by small-scale miners to BSP is not subject to excise tax; and (2) Gold sold by small-scale miners to BSP are not subject to 2% excise tax since they are subsequently exported by BSP and not meant for domestic sale or consumption *(Annex "E", Petition for Review)*. To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum *(Commissioner of Internal Revenue vs. Wander Philippines, Inc., 160 SCRA 576-577)*. It is well settled that under the same underlying principle of prior exhaustion of administrative remedies, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal *(Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue, 112 SCRA 136; Pampanga Sugar Dev. Co., Inc. vs. CIR, 114 SCRA 725; Garcia vs. Court of Appeals, 102 SCRA 597; Matialonzo vs. Servidad, 107 SCRA 726)*.

In any event, petitioner's contention that it was not accorded due process by respondent is untenable. *Section 228 of the NIRC of 1997, as amended*, prescribes the procedural due process requirements that must be accorded to a taxpayer, as follows:

> "SEC. 228. Protesting of Assessment – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx
>
> (c) When the excise tax due on excisable articles has not been paid; or
>
> xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the

> decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to the above provision, when respondent finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. A pre-assessment notice is not necessary when the assessment is based on an excise tax due on excisable articles that has not been paid.

In the present case, respondent found that no excise tax was paid on the gold purchased by petitioner from various small scale miners for the years 2001 to 2006; hence, on November 19, 2007, a Notice of Discrepancy was issued to petitioner, assessing it of deficiency excise tax imposed under *Section 151(A)(3)(b) of the NIRC of 1997, as amended,* in the amount of P4,596,013,949.30, as possessor of untaxed article, pursuant to *Section 130(A)(1), par. 2 of the same Code (Annex "C", Petition for Review)*. Attached to said Notice of Discrepancy is the computation of Deficiency Excise Tax *(Annex "C-1", Petition for Review)*. Petitioner was likewise given a period of fifteen (15) days to reply to said Notice of Discrepancy.

When petitioner failed to refute the Notice of Discrepancy, on December 21, 2007, an Assessment Notice *(Annex "D-2", Petition for*

Review), together with the Formal Letter of Demand *(Annex "D", Petition for Review)*, was issued to petitioner stating:

> "Please be informed that after verification made by this Office there is found due from you a deficiency excise tax in the amount of Four Billion Six Hundred Thirty Five Million Three Hundred Sixty Two Thousand Eight Hundred Twenty One and 04/100 Pesos (sic) (P4,635,362,821.04), inclusive of increments, imposed on your purchases of gold from various small scale miners for the years 2001 up to 2006. Records available in this Office, however, failed to show any excise tax payments made by your suppliers of the said purchased article, hence, as possessor of the untaxed article, you are liable to pay the aforesaid deficiency excise tax due pursuant to Section 130 (A) (1) paragraph 2 of the same Code.
>
> The assessment was computed pursuant to the provisions under Section 151 (A) (3) (b) of the 1997 National Internal Revenue Code. The complete details covering the aforesaid assessment are shown in the accompanying annex "A" of this Notice.
>
> The 25% surcharge has been imposed pursuant to the provisions of Section 248 (A) of the National Internal Revenue Code of 1997.
>
> In view thereof, you are requested to pay the abovementioned deficiency excise tax liability through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice."

Attached to the Formal Letter of Demand is a Computation of Deficiency Excise Tax For Taxable Years 2001 up to 2006 *(Annex "D-1", Petition for Review)*, to wit:

"BANGKO SENTRAL NG PILIPINAS
Computation of Deficiency Excise Tax
For Taxable Years 2001 up to 2006

Source: Mineral Economic, Information & Publication Division, Mines and Geosciences Bureau

	2006	2005	2004	2003	2002	2001	TOTAL
Taxable Value	P28,150,395,779.00	P24,203,219,433.00	P21,454,000,000.00	P19,930,000,000.00	P14,304,000,000.00	P10,005,000,000.00	P118,046,615,212.00
Multiply by tax rate	2%	2%	2%	2%	2%	2%	2%

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Basic Excise Tax Due	P563,007,915.58	P484,064,388.66	P429,080,000.00	P398,600,000.00	P286,080,000.00	P200,100,000.00	P2,360,932,304.24
Add: Surcharge (25%)	140,751,978.90	121,016,097.17	107,270,000.00	99,650,000.00	71,520,000.00	50,025,000.00	590,233,076.06
Interest (20%) 18 mos. 30 mos. 42 mos. 54 mos. 66 mos. 78 mos.	168,902,374.67	242,032,194.33	300,356,000.00	358,740,000.00	314,688,000.00	260,130,000.00	1,644,848,569.00
Total Deficiency Excise Tax	**P872,662,269.15**	**P847,112,680.16**	**P836,706,000.00**	**P856,990,000.00**	**P672,288,000.00**	**P510,255,000.00**	**P4,596,013,949.30**

Therefore, the factual basis of petitioner's annual purchases of gold from small-scale miners, which is the basis of the excise tax assessment, is petitioner's reported annual purchases of gold to the Mineral Economic, Information & Publication Division of the Mines and Geosciences Bureau, which are made of public record.

Clearly from the foregoing, petitioner was properly notified of the source of its deficiency tax liability and accorded due process prescribed under *Section 228 of the NIRC of 1997, as amended.*

Second Issue

Excise Tax Deficiency Assessment

As to the second issue, petitioner contends that the Commissioner of Internal Revenue erroneously ruled that the sale of gold by small-scale miners to BSP is subject to excise tax considering that: the purchase and possession of gold by petitioner is made pursuant to its constitutional and statutory mandate to maintain price stability conducive to a balanced and

sustainable growth of the economy; the excise tax on the gold is imposed based on the privilege of extracting said mineral from the earth springing from the Regalian doctrine of state ownership; the gold in possession of petitioner is owned by the state; the possession of gold by petitioner is legally necessary to further a governmental function; DENR Administrative Order 34 exempts from excise tax gold sold by small-scale miners to Central Bank which are considered for export; and DENR Administrative Order 34 is presumed valid.

On the other hand, respondent counter-argues that the basis of petitioner's tax liability are *Section 130(A)(1)* and *Section 151(A)(3)(b) of the NIRC of 1997, as amended*, which provide, as follows:

> "SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. –
>
> (A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. –
>
> (1) Persons Liable to File a Return. – Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity of volume of products to be removed, the applicable tax base and the amount of tax due thereon: Provided, however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim.
>
> Should domestic products be removed from the place of production without the payment of the tax, the owner or

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person having possession thereof shall be liable for the tax due thereon.

(2) Time for Filing of Return and Payment of the Tax. – Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from the place of production: Provided, That the excise tax on locally manufactured petroleum gas products and indigenous petroleum levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid within ten days (10) from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and before removal from the place of production of such products from January 1, 1999 and thereafter: Provided, further, That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable upon removal of such products from the locality where mined or extracted, but with respect to the excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or non-metallic, the excise tax due thereon shall be paid before their removal from customs custody.

xxx xxx."

"SEC. 151 (A) Rates of Tax. – There shall be levied, assessed and collected on minerals, mineral products and quarry resources, excise tax as follows:

xxx xxx

> (3) On all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation, in accordance with the following schedule:
>
> xxx xxx
>
> (b) Gold and chromite, two percent (2%).
>
> xxx xxx."

Gold Minerals Locally Extracted, Manufactured, Or Produced By Small Scale Miners are Subject to Excise Tax

We rule for the respondent.

Small-scale mining is governed by *RA 7076*, otherwise known as the *"People's Small Scale Mining Act of 1991"*, which was approved on June 27, 1991. *Section 13 (d) of RA 7076* provides:

> "SEC. 13. Terms and Conditions of the Contract. – A contract shall have a term of two (2) years, renewable subject to verification by the Board for like periods as long as the contractor complies with the provisions set forth in this Act, and confers upon the contractor the right to mine within the contract area: Provided, That the holder of a small-scale mining contract shall have the following duties and obligations:
>
> xxx xxx
>
> (d) Pay all taxes, royalties or government production share as are now or may hereafter be provided by law;
>
> xxx xxx."

Pursuant to *RA 7076*, the holder of a small-scale mining contract has the duty and obligation to pay all taxes that are now or may thereafter be provided by law. This provision repealed *Section 4 of PD 1899*, "Establishing Small-Scale Mining As A New Dimension In Mineral Development", which exempts small scale mining permittee/licensee during the term of the permit from the payment of all taxes, except income tax. *Section 28 of RA 7076* provides that all laws, decrees, letters of instruction, executive orders, rules and regulations, and other issuances, or parts thereof, in conflict or inconsistent with this Act, are hereby repealed or modified accordingly.

On the other hand, *Section 26 of RA 7076* provides that the DENR Secretary is mandated to promulgate rules and regulations to implement the provisions of *RA 7076,* within ninety (90) days from the effectivity of said act. In compliance therewith, *DENR Administrative Order 34*, otherwise known as *"Rules and Regulations to Implement Republic Act No. 7076, Otherwise Known as 'Peoples Small Scale Mining Act of 1991"* was issued on July 14, 1992. *Section 26 of DENR Administrative Order 34* provides:

> "Sec. 26. Payment of Taxes, Government Production Share. The Small-Scale Mining contractor shall pay to the government the following:
>
> 26.1. Income Tax as provided in the National Internal Revenue Code (Sec. 21);

26.2. Special Import Tax (If applicable);

26.3. Tariff Duties (If applicable);

26.4. Value Added Tax as provided in E.O. 273;

26.5. Real Property Tax (If applicable);

26.6. Excise Tax except gold sold to Central Bank which are considered for export; and

26.7. Government Share which shall be paid to Municipality or City Treasurer where the mining claims are located and shall be apportioned in accordance with the Local Government Code of 1991."

While *Section 13 (d) of RA 7076* provides that a holder of a small-scale mining contract has the duty and obligation to pay all taxes, as are now or may hereafter be provided by law, *Section 26 of DENR Administrative Order 34* enumerates the taxes that a small-scale mining contractor is liable to pay to the government. Specifically, a small-scale mining contractor is liable to pay excise tax, except gold sold to Central Bank which is considered for export. Hence, while *RA 7076* refers to a certain law which prescribes the taxes that a holder of small-scale mining contract may be held liable; however, its implementing regulations, *DENR Administrative Order 34,* did not only enumerate the specific taxes that a holder of a small-scale mining contract may be held liable, but it also prescribes a limitation on excise tax liability.

The law referred to in *RA 7076* is the *NIRC of 1997, as amended*, which took effect on January 1, 1998. *Section 129 of the NIRC of 1997, as amended,* provides that excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. Said excise tax shall be levied, assessed and collected on all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced *(Section 151, NIRC of 1997, as amended).* For gold and chromite, the excise tax rate is two percent (2%) *[Section 151(3)(b)].* Under *Section 130(A)(2) of the same Code*, the person required to file the return and pay the excise tax of metallic mineral or mineral products, such as gold, is the manufacturer or producer, within fifteen (15) days after the end of the calendar quarter when such products were removed, subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

From the foregoing provisions of *RA 7076* and the *NIRC of 1997, as amended*, it is clear that locally extracted, manufactured, or produced gold minerals, without any qualification whatsoever, are subject to excise tax of two percent (2%). The provision of *DENR Administrative Order 34* exempting from payment of excise tax gold sold to Central Bank,

which are considered for export, is a clear limitation of the law. It is contrary to the provision of *Section 130(D) of the NIRC of 1997, as amended*, which provides: "When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported" *(underscoring supplied)*.

The well settled doctrine is that rules and regulations which are the product of a delegated power to create new or additional legal provision that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. Department zeal may not be permitted to outrun the authority conferred by statute *(China Banking Corporation vs. The Members of the Board of Trustees, 307 SCRA 458)*.

As aptly ruled by the Supreme Court in the case of *Grego vs. Commission on Elections, 274 SCRA 498-499*:

> "Administrative regulations adopted under legislative authority by a particular department must be in harmony

> with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended (U.S. vs. Tupasi Molina, supra). An administrative agency cannot amend an act of Congress (Santos vs. Estenzo, 109 Phil 419 422; Teoxona vs. Members of the Board of Administrators, L-25619, June 30, 1970, 33 SCRA 585; Manuel vs. General Auditing Office, L-28952, December 29, 1971, 42 SCRA 660; Deluao vs. Casteel, L-21906, August 29, 1969 29 SCRA 350).
>
> The rule making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned (University of Santo Tomas vs. Board of Tax Appeals, 93 Phil. 376, 382, citing 12 C.J. 845-46. As to invalid regulations, see Collector of Internal Revenue vs. Villaflor, 69 Phil. 319; Wise & Co. vs. Meer, 78 Phil. 655, 676; Del Mar vs. Phil. Veterans Administration, L-27299, June 27, 1973, 51 SCRA 340, 349)."

Thus, notwithstanding *DENR Administrative Order 34* exempting from the payment of excise tax gold sold to Central Bank which are considered for export, pursuant to *RA 7076* and *Sections 130 and 151 of the NIRC of 1997, as amended*, We rule that gold locally extracted, manufactured, or produced by small scale miners, to whomever were sold are subject to excise tax.

Who is Liable to Pay the Excise Tax Due on Gold Minerals Locally Extracted, Manufactured, Or Produced By Small Scale Miners?

We now address the question of who is liable to pay the excise tax on gold locally extracted, manufactured, or produced by small scale miners that are sold to the Central Bank.

Under *Section 130 of the NIRC of 1997, as amended*, the person required to file the return, and to pay the excise tax thereon is the manufacturer or producer of the domestic product, which under *RA 7076* is the holder of the small-scale mining contract. Therefore, the person primarily liable to pay the excise tax on gold extracts is the holder of the small-scale mining contract.

However, in the last paragraph of *Section 130(A)(1) of the same Code,* it is likewise provided that "should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon".

The second paragraph of *Section 130(A)(1)* is very clear. The Court may not construe a statute that is free from doubt *(Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), 462 SCRA 220)*. Where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application *(Cebu Portland Cement Co. vs. Municipality of Naga, Cebu, 24 SCRA 712)*. The Court has no choice but to see to it that its mandate is obeyed *(Luzon Surety Co., Inc. vs. De Garcia, 30 SCRA 116)*.

Pursuant to the second paragraph of *Section 130(A)(1) of the NIRC of 1997, as amended*, while the holder of the small-scale mining contract has the primary obligation to pay the excise tax on gold extracts, should the gold extracts be removed from the place of production without the payment of the excise tax due thereon, the owner or person in possession thereof shall be liable for the excise tax.

Ownership over property is acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition *(Art. 712, New Civil Code)*. For things sold, in the absence of stipulation to the contrary, the ownership of the thing sold passes to the vendee upon the actual or constructive delivery thereof *(Art. 1477, New Civil Code; Froilan vs. Pan Oriental Shipping Co., 12 SCRA 285)*. On the other hand, possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right *(Art. 531, New Civil Code)*. Thus, ownership over gold produced is transferred to the buyer upon delivery thereof to the buyer. From the moment that the gold extracts are delivered by the seller-holders of the small-scale mining contract to the buyer-BSP, the latter becomes the possessor thereof. If the excise tax due thereon remains unpaid, the buyer, being now the owner and possessor of the gold produced, is liable

to pay the excise tax due thereon, by express provision of *Section 130(A)(1) of the NIRC of 1997, as amended.*

In the present case, petitioner was being assessed of the excise tax due for its purchases of gold from various small-scale miners for the years 2001 to 2006 because records show that no excise tax was paid by the holders of the small-scale mining contract. Pursuant to *Section 130(A)(1) of the NIRC of 1997, as amended*, it necessarily follows, therefore, that petitioner, being the purchaser, the owner and possessor of gold sold by small-scale miners, is liable of the excise tax due thereon.

Furthermore, in the recent case of *Petron Corporation vs. Tiangco, 551 SCRA 492, 494,* the Supreme Court ruled that, "the proffered definition of an excise tax as 'a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation' derives from the compendium *American Jurisprudence,* popularly referred to as *Am Jur*, has undergone a transformation, morphing from the *Am Jur* definition to its current signification which is a tax on certain specified goods or articles. It is evident that *Am Jur* aside, the current definition of an excise tax is that of a tax levied on a specific article, rather than one 'upon the performance, carrying on, or the exercise of an activity" beginning with the *National Internal Revenue Code of 1986, as amended.*

Excise tax being a tax on certain specified goods or articles, and not upon the privilege of severing the minerals from the earth, it logically follows that excise tax can be assessed not only on the holder of the small-scale mining contract, but the same tax can also be assessed to whoever is the possessor of the mineral or mineral product, when at the time of the assessment, the excise tax remains unpaid; as excise tax attaches to the product itself. This finds support from *Sections 141* on Distilled Spirits and *148* on Petroleum Products of the *NIRC of 1997, as amended*, stating that excise tax attaches to the product itself. On this basis, a lien is created, so to speak, in favor of the government for the excise tax due on the product upon its existence and even before the prescribed time for payment of the excise tax by the manufacturer or producer of the product. *Section 137 of the same Code* on Rectification of Alcohol supports this concept as the rectifier is held liable for losses on bonded alcohol. The respective revenue regulations implementing the different products subject to excise tax under Title VI of the Tax Code, hold the manufacturers or producers liable on the excise tax that is otherwise due on losses incurred by the manufacturer or producer beyond the threshold set by these regulations. Since a lien has been created on the product, to hold the subsequent owner or possessor of the untaxed product liable of the excise tax due thereon, which should have been paid

in the first place by the manufacturer or producer thereof, under *Section 130(A)(1) of the same Code*, has legal basis.

In sum, We rule that petitioner, being the owner and possessor of the gold extracts, is liable of the excise tax due on the gold purchased from small-scale miners, which remains unpaid at the time of the assessment.

Third Issue

Imposition of Surcharge and Interest

However, as to the imposition of surcharge and interest, in the cases of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue, 138 SCRA 631-632* and *Advertising Associates, Inc. vs. Court of Appeals, 133 SCRA 770*, the Supreme Court ruled that when the assessment is highly controversial as when the taxpayer had reason not to pay the tax, it should be liable only for the tax proper and should not be held liable for the surcharge and interest.

Pursuant to the foregoing ruling considering that there is reason for petitioner BSP not to pay the excise tax on gold purchased from small-scale miners due to the provision of *DENR Administrative Order 34*, exempting from the payment of excise tax gold sold to Central Bank, which are considered for export, we hold that petitioner is not liable of the surcharge and interest of the subject assessment.

Moreover, in the case of *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue, 501 SCRA 460,* the Supreme Court ruled, as follows:

> "The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest. *In Connel Bros. Co. (Phil.) v. Collector of Internal Revenue*, it was held that:
>
> > 'We are convinced that appellant, in preparing its sales invoices as it did, was guilty of an intentional violation of the law. It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by the appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.
> >
> > WHEREFORE, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appealed from is affirmed, without costs.'
>
> This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*, where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue vs. Republic Cement Corporation*, where the same surcharge was dispensed with because of the taxpayer's good faith and the BIR's previous erroneous interpretation of the laws involved. We see no reason not to apply the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST."

Since the Supreme Court has ruled in a litany of cases that the imposition of surcharge and interest can be deleted when on the basis of a

previous interpretation of the agency tasked to implement the law, the taxpayer acted in good faith and in honest belief that it is not subject to tax, We see no reason to apply the same doctrine in the present case.

Accordingly, petitioner is liable to pay basic deficiency excise tax only, computed as follows:

	2006	2005	2004	2003	2002	2001	TOTAL
Taxable Value	P28,150,395,779.00	P24,203,219,433.00	P21,454,000,000.00	P19,930,000,000.00	P14,304,000,000.00	P10,005,000,000.00	P118,046,615,212.00
Multiply by tax rate	2%	2%	2%	2%	2%	2%	2%
Basic Excise Due	**P563,007,915.58**	**P484,064,388.66**	**P429,080,000.00**	**P398,600,000.00**	**P286,080,000.00**	**P200,100,000.00**	**P2,360,932,304.24**

(Annex "D-1", Petition For Review)

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, petitioner BSP is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of **TWO BILLION THREE HUNDRED SIXTY MILLION NINE HUNDRED THIRTY TWO THOUSAND THREE HUNDRED FOUR and 24/100 PESOS (P2,360,932,304.24)**, representing the basic excise tax due on the gold purchased from small-scale miners for the years 2001 to 2006.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
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.

JUANITO C. CASTANEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson'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.

ERNESTO D. ACOSTA
Presiding Justice