Republic of the Philippines
Supreme Court
Manila

EN BANC

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 251453

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 263004

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,*
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
GAERLAN,
ROSARIO,
LOPEZ,**
DIMAAMPAO,
MARQUEZ,
KHO, JR.,***
SINGH, and
VILLANUEVA *JJ.*

Promulgated:
December 3, 2025

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* Dissenting.
** On official leave but left a concurring vote.
*** On official business.

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DECISION

SINGH, *J.*:

G.R. No. 263004 presents the Court with a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Oceanagold (Philippines), Inc. (**Oceanagold**) seeking to reverse the Decision,[2] dated May 31, 2022, and the Resolution,[3] dated September 1, 2022, of the Court of Tax Appeals (**CTA**) *En Banc* in CTA EB No. 2492. The CTA *En Banc* affirmed the Decision,[4] dated October 7, 2020, and the Resolution,[5] dated March 12, 2021, of the CTA Third Division (**CTA Division**), which denied Oceanagold's claim for refund of erroneously paid excise taxes of PHP 136,407,793.17 for the period of June to December 2014.

On the other hand, G.R. No. 251453 presents the Court with a Motion for Reconsideration seeking to reverse the Resolution of the Supreme Court, dated February 15, 2022, which denied the Petition for Review on *Certiorari*[6] under Rule 45 of the Rules of Court filed by Oceanagold. The Supreme Court upheld the Decision,[7] dated August 16, 2019, and the Resolution,[8] dated January 23, 2020, of the CTA *En Banc* in CTA EB No. 1904. The CTA *En*

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1 *Rollo* (G.R. No. 263004), pp. 44–76.

2 *Id.* at 80–100. The May 31, 2022 Decision in CTA EB No. 2492 was penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo, and Lanee S. Cui-David of the Court of Tax Appeals *En Banc*, Quezon City. Associate Justice Ma. Belen M. Ringpis-Liban issued a Concurring and Dissenting Opinion.

3 *Id.* at 108–112. The September 1, 2022 Resolution in CTA EB No. 2492 was penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, and Lanee S. Cui-David of the Court of Tax Appeals *En Banc*, Quezon City.

4 *Id.* at 120–147. The October 7, 2020 Decision in CTA Case No. 9289 was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Erlinda P. Uy of the Third Division, Court of Tax Appeals, Quezon City. Associate Justice Maria Rowena Modesto-San Pedro issued a Concurring and Dissenting Opinion.

5 *Id.* at 114–118. The March 12, 2021 Resolution in CTA Case No. 9289 was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justices Erlinda P. Uy and Maria Rowena Modesto-San Pedro of the Third Division, Court of Tax Appeals, Quezon City.

6 *Id.* at 12–45.

7 *Rollo* (G.R. No. 251453), pp. 46–75. Penned by Associate Justice Juanito C. Castañed, Jr. and concurred in by Associate Justices Roman G. Del Rosario, Erlinda P. Uy. Cielito N. Mindaro-Grulla, Ma. Bellen M. Ringpis-Liban, Catherin T. Manhan, Jean Marie A. Bacorro-Villena and Maria Rowena Modesto-San Pedro of the Court of Tax Appeals *En Banc*, Quezon City.

8 *Id.* at 76–85. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Roman G. Del Rosario, Cielito N. Mindaro-Grulla, Ma. Bellen M. Ringpis-Liban, Catherine T. Manhan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro of the Court of Tax Appeals *En Banc*, Quezon City.

Banc affirmed the Decision,[9] dated March 22, 2018, and the Resolution,[10] dated July 20, 2018, of the CTA Division, which denied Oceanagold's claim for refund or for the issuance of a tax credit certificate (**TCC**) in the amounts of PHP 25,843,462.11 and PHP 42,785,549.13, representing alleged erroneously paid excise taxes for the periods of February to March 2013 and April to June 2013.

The Facts

Facts common to G.R. Nos. 251453 and 263004

On June 20, 1994, a Financial and Technical Assistance Agreement (**FTAA**) was executed by then Executive Secretary Teofisto Guingona and Bryce G. Roxburgh, then President of Arimco Mining Corporation. This FTAA bore the recommendation of then Secretary of Environment and Natural Resources Angel C. Alcala. This FTAA was eventually assigned to Oceanagold with the approval of the Government.[11]

Known as the Didipio Gold-Copper Project (**Didipio Project**), the FTAA involves the large-scale exploration, subsequent development, and commercial utilization of mineral deposits over a contract area spanning the Provinces of Nueva Vizcaya and Quirino.[12]

On March 3, 1995, Congress enacted Republic Act No. 7942 or the Philippine Mining Act of 1995, which provided a legal framework for the exploration, development, utilization, and conservation of the country's mineral resources.

Shortly thereafter, the Department of Environment and Natural Resources (**DENR**) released the implementing rules and regulations (**IRR**) of Republic Act No. 7942 in the form of DENR Administrative Order No. 95-23. In December 1999, the DENR promulgated DENR Administrative Order 99-56, providing the guidelines establishing the fiscal regime of FTAAs.[13]

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9 *Id.* at 104–134. Penned by Associate Justice Lovell R. Bautista, and concurred in by Associate Justices Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban of the Third Division, Court of Tax Appeals, Quezon City.

10 *Id.* at 87–101. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justices Erlinda P. Uy and Maria Rowena Modesto-San Pedro of the Third Division, Court of Tax Appeals, Quezon City.

11 *Id.* at 18.

12 *Id.*

13 *Id.* at 19.

After conducting mineral exploration activities, Oceanagold identified a portion of the Exploration Contract Area as being suitable for the Didipio Project and subsequently filed a Partial Declaration of Mining Feasibility (**PDMF**) with the DENR. The DENR approved the PDMF on October 11, 2005, and constituted a portion of the Exploration Contract Area as the mining area.[14]

On February 13, 2007, on the basis of Section 81 of the FTAA and Section 236 of DENR Administrative Order 95-23, Oceanagold filed with the Bureau of Internal Revenue (**BIR**) a request for ruling, requesting confirmation that it is exempt from the payment of excise tax on minerals during the recovery period. [15]

In response, on May 4, 2007, the BIR issued BIR Ruling No. 10-2007, declaring that Oceanagold is exempt from the payment of excise tax from the date of approval of its mining project feasibility study up to the end of the recovery period, which period shall be reckoned from the date of commercial operation and shall be for a maximum period of five years, or until the date of recovery of pre-operating expenses and exploration and development expenditures, whichever comes earlier.[16]

In 2008, Oceanagold halted further mine development in the Didipio Project due to escalating costs and uncertainty in the financial markets. Oceanagold thus placed the Didipio Project under "care and maintenance," from December 2008 to December 2010.[17]

In December 2010, after completing a strategic review and securing further financing, Oceanagold resumed work on the Didipio Project. [18]

In 2012, Oceanagold successfully commenced the commissioning of the Didipio Project and mined and stockpiled approximately 800,000 metric tons (**MT**) of ore for further processing. As part of the commissioning process, Oceanagold commenced milling operations to produce copper concentrates. [19] The very first sale and delivery of copper concentrates was expected in April 2013. [20]

Mission Order No. 00030182, dated September 3, 2012, was issued by BIR Revenue Region No. 3, authorizing certain revenue officers to search

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14 *Id.* at 21.
15 *Id.*
16 *Id.* at 21–22, 49.
17 *Id.* at 48-49.
18 *Id.* at 49.
19 *Id.*
20 *Id.* at 22.

Oceanagold's premises for articles subject to excise tax and to detain packages containing taxable articles.[21]

On December 7, 2012, pursuant to the Mission Order, and to prevent Oceanagold from making removals of copper concentrates without pre-payment of excise tax, the BIR seized and detained approximately 800,000 MT of mineral ores stockpiled in the mine site.[22]

On December 10, 2012, Oceanagold wrote a letter to the Revenue Region No. 3, protesting the seizure and detention of 800,000 MT of mineral ores.[23]

G.R. No. 251453: Refund of excise tax of PHP 68,629,011.54, collected from February to March 2013 and April to June 2013

On January 13, 2013, in connection with its planned first delivery and sale of copper concentrates in April 2013, Oceanagold obtained an Ore Transport Permit (**OTP**) from the Mines and Geosciences Bureau (**MGB**), authorizing the sale and delivery of 5,500 MT of copper concentrates from the Didipio mine site up to the shipping point in Poro Point, La Union. Another OTP was issued by the MGB on February 13, 2013, which extended the OTP issued on January 14, 2013 until March 13, 2013.[24]

On February 11 and 12, 2013, while Oceanagold was transporting copper concentrates for delivery to its buyer, a total of 100 MT with an estimated value of USD 320,000.00 of copper concentrates were seized and detained by the BIR.[25]

On February 15, 2013, the BIR issued Revenue Memorandum Circular (**RMC**) No. 17-2013 revoking BIR Ruling No.10-2007, which confirmed Oceanagold's exemption from excise tax during the Recovery Period.[26]

On February 25 and 26, 2013, Oceanagold paid under protest excise taxes amounting to PHP13,942,179.39 and PHP 417,743.20, respectively,

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21 *Id.* at 49.
22 *Id.*
23 *Id.*
24 *Id.* at 22.
25 *Id.* at 22, 50.
26 *Id.* at 50.

allegedly due on the seized copper concentrates and the remaining concentrates awaiting removal from the site, or a total of 5,500 MT.[27]

On February 20, 2013, while Oceanagold was again transporting copper concentrates for delivery to a buyer, the BIR seized, apprehended, and detained 160 MT of copper concentrates with an estimated value of USD 512,000.00.[28]

Considering that it was able to mine 15% of its initial annual production capacity by the end of February 2013, Oceanagold notified the DENR, through a letter dated March 27, 2013, that the date of its commencement of commercial production is April 1, 2013.[29]

On March 1, 2013, the BIR seized and detained 40 MT of Oceanagold's copper concentrates while in transit.[30]

On March 26, 2013, Oceanagold pre-paid the amount of PHP 11,483,539.82 representing its excise tax for its next scheduled removals of copper concentrates for transport and sale to its buyers.[31]

On April 29, 2013, Oceanagold again pre-paid excise taxes in the amount of PHP 20,420,131.15 allegedly due on 11,000 wet metric tons (**WMT**) of copper concentrates awaiting removal from the mine site pursuant to the OTP issued by MGB. Another payment was made on May 30, 2013, in the amount of PHP 20,783,962.43 allegedly to cover the next scheduled removals of 11,000 WMT of copper concentrates for transport and sale to its buyer.[32]

On June 25, 2013, Oceanagold prepaid the amount of PHP 1,581,455.55 representing alleged excise taxes to cover its next scheduled removals of 1,685.57 ounces of doré bars for transport and sale to its buyer.[33]

On February 20, 2015, Oceanagold filed a letter addressed to Ms. Sarah B. Mopia, Chief of Excise LT Audit Division I, seeking the recovery of: (1) excise taxes paid for the period from February to March 2013 in the aggregate

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27 *Id.*
28 *Id.* at 23.
29 *Id.*
30 *Id.* at 50.
31 *Id.*
32 *Id.*
33 *Id.* at 51.

amount of PHP 25,843,462.41; and (2) excise taxes paid for the period from April to June 2013 in the aggregate amount of PHP 42,785,549.13.[34]

The BIR failed to act on the letter. Thus, on April 28, 2015, Oceanagold filed two separate Petitions for Review before the CTA Division docketed as CTA Case Nos. 8995 and 9035, raffled to the Third and Second Division, respectively.[35]

In its Petitions, Oceanagold prayed for the following:

1. In CTA Case No. 8995, to (a) declare Oceanagold entitled to a refund of, or the issuance of a TCC for PHP 25,843,462.11, representing alleged erroneously paid and illegally and wrongfully collected excise taxes for the period from February to March 2015; and (b) order the BIR to refund or to issue a TCC in favor of Oceanagold in the said amount;[36] and

2. In CTA Case No. 9034, to (a) render a judgment declaring Oceanagold entitled to a refund of, or the issuance of a TCC, in the amount of PHP 42,785,549.13, representing alleged erroneously paid and illegally and wrongfully collected excise taxes on Oceanagold's removals of copper concentrates and doré bars for the period from April to June 2013; and (b) order the BIR to refund or to issue a TCC in favor of Oceanagold in the said amount.[37]

In the Resolutions, dated August 4 and September 4, 2015, the CTA Second and Third Divisions granted the Motion for Consolidation of the two cases. Accordingly, CTA Case No. 9034 was consolidated with Case No. 8995, the latter bearing the lower docket number.[38]

The Ruling of the CTA Division in G.R. No. 251453

In the Decision, dated March 22, 2018, the CTA Division denied Oceanagold's Petition for Review. The dispositive portion of the Decision reads, as follows:

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34 *Id.*
35 *Id.*
36 *Id.* at 104.
37 *Id.*
38 *Id.* at 52.

> **WHEREFORE** premises considered, the Petitions for Review filed by [Oceanagold] in CTA Case Nos. 8995 and 9034, claiming for the refund of or for the issuance of a tax credit certificate in the amounts of [PHP] 25,843,462.11 and [PHP] 42,785,549.13 representing alleged erroneously paid and illegally and wrongfully collected excise taxes for the period[s] from February to March 2013, and April to June 2013, respectively, are hereby DENIED for lack of merit.
>
> **SO ORDERED**.[39] (Emphasis in the original)

The CTA Division held that Oceanagold failed to present evidence to prove that the imposition of excise tax was made during the Recovery Period.[40]

From a review of the FTAA, Republic Act No. 7942 and its IRR, the CTA Division held that (1) the government's share includes excise tax; (2) the collection of the government's share shall not commence until the contractor has fully recovered its pre-operating, exploration and development expenses; and (3) the period of recovery shall be from the date of commercial operation, which shall not exceed five years, or until the date of actual recovery, whichever comes earlier.[41]

Clearly, Oceanagold has a maximum of five years of exemption from excise tax, or the period when the aggregate of the "Net Cash Flows from the Mining Operations" is equal to the aggregate of its pre-operating expenses, reckoned from the date of commencement of commercial production, whichever comes first.[42]

Thus, to determine the date when the aggregate of the "Net Cash Flows from the Mining Operations" is equal to the aggregate of Oceanagold's pre-operating expenses, and ultimately, to ascertain whether it is proper to impose excise taxes, the amount of "Net Cash Flows" and "Pre-Operating Expenses" should first be determined. Oceanagold alleged that its pre-operating expenses amounted to USD 429,153.92 as of March 31, 2013. However, other than the testimony of Independent Certified Public Accountant Richard R. Lapres that Oceanagold is yet to recover its pre-operating expenditures amounting to USD 293,500.00, Oceanagold failed to present pre-operating expenses duly approved by the Secretary of the DENR, as recommended by the Director of the MGB, and as mandated under DENR AO No. 1999-56.[43]

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39 *Id.* at 133–134.
40 *Id.* at 130.
41 *Id.* at 128.
42 *Id.* at 130.
43 *Id.* at 131–132.

The CTA Division thus denied Oceanagold's Motion for Reconsideration in a Resolution, dated July 20, 2018.[44]

The Ruling of the CTA En Banc in G.R. No. 251453

In a Decision, dated August 16, 2019, the CTA *En Banc* denied Oceanagold's Petition for Review, as it found no reason to disturb the findings of the CTA Division. The dispositive portion of the Decision reads:

> **WHEREFORE**, the present Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED**.[45] (Emphasis in the original)

First, the CTA *En Banc* ruled that Oceanagold was entitled to the benefit of the principle of non-retroactivity of rulings and circulars under the National Internal Revenue Code (**NIRC**).[46] The effect of applying RMC No. 17-2013 retroactively, along with the consequent revocation of BIR Ruling No. 10-2007, was indeed prejudicial.[47]

Second, based on the FTAA and the PDMF, Oceanagold should have commenced commercial operations and production in the fourth quarter of 2008.[48] The FTAA provisions would reveal that Oceanagold had three years from the approval of its PDMF on October 11, 2005, or until October 11, 2008, to develop and construct mining production facilities. After which, Oceanagold had to submit within 30 days another work program for three years for the actual production activities. Oceanagold should have started commercial production accordingly and should have advised the government within 15 days that commercial production had commenced. Failure to commence production shall be considered a substantial breach of the FTAA.[49]

Lastly, the CTA *En Banc* ruled that DENR Administrative Order No. 99-56 is applicable to Oceanagold. Thus, the requirement that its pre-operating expenses be approved by the Secretary of the DENR upon recommendation of the Director of the MGB.[50]

The CTA *En Banc* denied Oceanagold's Motion for Reconsideration in a Resolution, dated January 23, 2020, for lack of merit.[51]

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44 *Id.* at 87–101.
45 *Id.* at 74.
46 *Id.* at 63.
47 *Id.* at 64.
48 *Id.* at 69.
49 *Id.*
50 *Id.* at 73, 78.
51 *Id.* at 76–85.

The Ruling of the Court in G.R. No. 251453

The Court denied the Petition in a Resolution, dated February 15, 2022, the dispositive portion of which reads:

> **FOR THESE REASONS,** the petition is **DENIED.**
>
> **SO ORDERED.**[52] (Emphasis in the original)

Essentially, the Court ruled that Oceanagold was not able to prove that it paid the subject excise taxes within the Recovery Period.

The Court agreed that Oceanagold had three years from the approval of its PDMF on October 11, 2005, or until October 11, 2008, to develop and construct mining production facilities. After which, it had to submit a work program for three years for the actual production activities and start commercial production. Failure to begin production within the prescribed period is a substantial breach of the FTAA.[53]

Although Oceanagold is given latitude in setting the reckoning point of the five-year recovery period, there is a specific and strict timetable for the conduct of pre-operation activities, including the period within which Oceanagold should start commercial production.[54] Oceanagold cannot delay pre-operation activities of its own free will without observing the conditions specified in the FTAA.[55]

In this case, there is insufficient evidence that Oceanagold complied with the conditions that would justify the suspension of the performance of its obligations under the FTAA, and consequently, the deferment of the reckoning point of the recovery period.[56]

Thus, since Oceanagold failed to establish that the excise taxes were collected during the recovery period, the Court did not find the need to discuss delve into the issue of the applicability of DENR Administrative Order No. 99-561 regarding the requirement of prior approval by the DENR Secretary of the pre-operating expenses. [57]

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52 *Id.* at 345.
53 *Id.* at 343.
54 *Id.* at 342.
55 *Id.* at 344.
56 *Id.*
57 *Id.* at 345.

G.R. No. 263004: Refund of excise taxes of PHP 136,407,793.17 collected from June to December 2014

To recall, on December 7, 2012, the BIR ordered the detention of the mineral ores in the stockpile of Oceanagold to prevent the latter from removing them for eventual sale.[58]

From June to December 2014, Oceanagold paid under protest the excise taxes allegedly due on its mineral ores in the total amount of PHP 136,407,793.17.[59]

On February 20, 2015, Oceanagold filed an administrative claim for refund with the BIR for the recovery of the alleged erroneously or illegally collected excise taxes which it paid under protest.[60]

The BIR issued a Letter, which Oceanagold received on February 12, 2016, denying the latter's administrative claim for refund of the excise taxes which it paid from June to December 2014.[61]

Aggrieved, Oceanagold filed a Petition for Review with the CTA on March 11, 2016.[62]

The Ruling of the CTA Division in G.R. No. 263004

In the Decision, dated October 7, 2020, the CTA Division denied Oceanagold's Petition for Review. The dispositive portion of the said Decision reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit.
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> **SO ORDERED**.[63] (Emphasis in the original)

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58 *Rollo* (G.R. No. 263004), p. 81.
59 *Id.* at 82.
60 *Id.*
61 *Id.*
62 *Id.* at 83.
63 *Id.* at 144.

The CTA Division first held that Oceanagold was able to timely file both the administrative and judicial claims for refund within the two-year period prescribed under Sections 204 (C) and 229 of the NIRC.[64]

It then ruled that Oceanagold is not exempt from the payment of excise tax during the recovery period, but its collection is merely deferred. The CTA Division held that under Section 11.2 of the FTAA, Oceanagold is required to prove that the payment of excise tax during the recovery period was detrimental to its recovery of pre-operating and property expenses. The CTA Division found that Oceanagold failed to comply with this requirement.[65]

The CTA Division ruled that RMC No. 17-2013 is void for failure to provide due notice to Oceanagold in accordance with RMC No. 10-1986. Notwithstanding, the CTA Division likewise ruled that BIR Ruling No. 10-2007, which was the subject of revocation by RMC No. 17-2013, is likewise void for Oceanagold's alleged misrepresentation. It held that the said Ruling, which was based on Oceanagold's averment that its "initial commercial production is now expected to commence on the 4th quarter of 2008,"[66] belies its allegation in the Petition that it commenced commercial production on the 2nd quarter of 2013.

Oceanagold filed a Motion for Reconsideration,[67] which was denied by the CTA Division in the Resolution,[68] dated March 12, 2021.

Oceanagold then filed a Petition for Review[69] with the CTA *En Banc*.

The Ruling of the CTA En Banc in G.R. No. 263004

The CTA *En Banc* denied Oceanagold's Petition for Review of the Decision, dated May 31, 2022, the dispositive portion of which reads:

> **WHEREFORE**, the Petition for Review filed on July 13, 2021 is **DENIED**. The Decision[,] dated October 7, 2020[,] and [the] Resolution[,] dated March 12, 2021[,] rendered by the Court in Division in CTA Case No. 9289 are **AFFIRMED**.
>
> **SO ORDERED**.[70] (Emphasis in the original)

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64 *Id.* at 131–133.
65 *Id.* at 133–138.
66 *Id.* at 143.
67 *Id.* at 461–476.
68 *Id.* at 114–118.
69 *Id.* at 482–522.
70 *Id.* at 102.

The CTA *En Banc* held that, under the FTAA and as supported by Section 81 of Republic Act No. 7942, Oceanagold is exempt from the payment of excise tax during the recovery period. In particular, Section 11.2, in relation to Section 11.5, of the FTAA provides that the government's share in Oceanagold's net revenue, which includes excise tax, will only accrue after the recovery period. It was also ruled that even though Republic Act No. 7942 did not retroactively affect the FTAA, the intent of the law in granting fiscal incentives supports the view that Oceanagold is exempt from payment of excise tax during the recovery period.[71]

The CTA *En Banc* corrected the CTA Division by holding that BIR Ruling No. 10-2007 is invalid. It held that the said BIR Ruling was explicit that Oceanagold's Recovery Period was only "expected" to commence in the fourth quarter of 2008. This did not operate to invalidate the BIR Ruling, which confirmed Oceanagold's tax exemption.[72]

Notwithstanding, the CTA *En Banc* ruled that Oceanagold is not entitled to the recovery of the excise taxes paid since it failed to prove that these collections were detrimental to the latter's recovery of pre-operating and property expenses. It found that Oceanagold failed to produce Oceanagold's audited financial statements during the recovery period. Moreover, the report of the independent certified public accountant did not discuss the detrimental effects of the collection of excise tax on Oceanagold. Thus, Oceanagold may not recover the paid excise tax, but may apply it in the future by deducting the said amount from the government's share, in accordance with Section 11.2 of the FTAA.[73]

Oceanagold's Motion for Reconsideration was denied in the assailed Resolution, dated September 1, 2022.[74]

The Issues

In G.R. No. 251453, did the Court commit a reversible error in denying Oceanagold's refund claim for its failure to establish that the excise taxes, which are the subject of its claim, were collected within the recovery period?

In G.R. No. 263004, did the CTA *En Banc* commit a reversible error when it denied Oceanagold's refund claim for erroneously or illegally collected excise tax due to the latter's failure to prove that the excise tax

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71 *Id.* at 88–98.
72 *Id.* at 98–99.
73 *Id.* at 99–102.
74 *Id.* at 39.

payment was not detrimental to recovery of its Pre-operating and property expenses?

The Ruling of the Court

The resolution of the core question in these cases revolves around the proper interpretation of the FTAA and its surrounding legal framework. After a thorough review of the same, the Court finds no merit in both the Motion for Reconsideration in G.R. No. 251453 and the Petition for Review on *Certiorari* in G.R. No. 263004.

The legal framework for Philippine mining

The Philippines has a well-established history as a significant producer of metals. In the mid-1970s, the mining sector contributed up to 24% of the country's foreign exchange earnings. By 1980, copper, nickel, chrome, and gold mines generated an average of USD 1.2 billion in annual export revenues.[75]

A review of the legal framework governing mining in the Philippines is essential in understanding the FTAA because it provides context for the evolution of mining policies, regulatory priorities, and the balance between national development and foreign investment.

The legal landscape of mining in the Philippines has undergone significant changes over time, reflecting shifts in governmental approaches to resource management, environmental protection, and economic benefit-sharing.

On May 17, 1974, Presidential Decree No. 463, or the Mineral Resources Decree of 1974, was issued to promote and encourage the development of mineral resources in the Philippines. In its Whereas Clauses, Presidential Decree No. 463 recognizes that mineral production is vital to the national economy, requiring urgent exploration, development, and utilization of the country's resources, and was the first statute to regulate the exploration, development, and utilization of mineral resources in the Philippines. It outlines the procedures for granting mineral rights to private entities while ensuring that the government maintains ownership over the country's mineral resources. The decree establishes guidelines for responsible mining operations, setting environmental and safety standards for mining activities.

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[75] III Record, Senate, 9th Congress, Third Regular Session (January 16, 1995).

However, upon the effectivity of the 1987 Constitution, "the State assumed a more dynamic role in the exploration, development and utilization of the natural resources of the country."[76] This marked a significant shift in policy, emphasizing that all natural resources are owned by the State, and their exploration, development, and utilization must be under its full control and supervision. The Constitution introduced stricter safeguards to ensure that natural resources are used sustainably and primarily for the benefit of Filipinos. It underscored the importance of protecting national patrimony by limiting the direct participation of foreign entities, except through specific agreements where the State retains control.

Thus, Article XII, Section 2 of the 1987 Constitution explicitly mandates that the exploration, development, and utilization of natural resources must be under the full control and supervision of the State. In line with this directive, the State may undertake such activities directly, or opt to engage in co-production, joint venture, or production-sharing agreements. Additionally, it may enter into agreements with foreign-owned corporations for technical or financial assistance in large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils, provided these are conducted under the general terms and conditions prescribed by law. Such agreements must demonstrate real contributions to the country's economic growth and general welfare, ensuring that the nation's resources are managed responsibly and for the benefit of its people. [77] Article XII, Section 2 of the 1987 Constitution reads:

> ARTICLE XII
> NATIONAL ECONOMY AND PATRIMONY
>
> Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least [60] per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding [25] years, renewable for not more than [25] years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant.

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[76] *See Miners Association of the Philippines, Inv. v. Factoran,* 310 Phil. 113, 130–131 (1995) [Per J. Romero, *En Banc*].

[77] *Id.* at 131.

> The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.
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> The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.
>
> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.
>
> The President shall notify the Congress of every contract entered into in accordance with this provision, within [30] days from its execution.

To operationalize the constitutional mandate regarding the State's full control and supervision over natural resources while ensuring the continuity of mining operations, then President Corazon C. Aquino issued Executive Order No. 211 on July 10, 1987, titled "Prescribing the Interim Procedures in the Processing and Approval of Applications for the Exploration, Development, and Utilization of Minerals." This Executive Order aimed to bridge the transition period by providing interim guidelines for processing both pending and new applications, thereby avoiding disruptions in the mining sector. Recognizing the mining industry's vital role in national economic development, the law sought not only to streamline administrative processes, but also to uphold the constitutional directive of responsible resource management. The same also underscored the Government's commitment to facilitating investments and ensuring that mining activities contribute to the country's economic growth while adhering to the principles of sustainability and national patrimony outlined in the 1987 Constitution.[78]

Recognizing the "existing and expected proposals from interested parties, including foreign-owned corporations, for agreements involving the exploration, development[,] and utilization of minerals,"[79] then President Corazon C. Aquino issued Executive Order No. 279 on July 25, 1987, titled "Authorizing the Secretary of Environment and Natural Resources to Negotiate and Conclude Joint Venture, Co-Production, or Production-Sharing Agreements for the Exploration, Development[,] and Utilization of Mineral Resources, and Prescribing the Guidelines for such Agreements and those Agreements Involving Technical or Financial Assistance by Foreign-Owned Corporations for Large-Scale Exploration, Development, and Utilization Of

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78 Executive Order No. 211 (1987), Whereas clauses.
79 Executive Order No. 279 (1987), Whereas clause, par. 3.

Minerals." This Executive Order meant to provide an interim legal basis for such agreements until Congress could pass comprehensive legislation pursuant to Article XII, Section 2 of the 1987 Constitution.[80]

In light of the authority delegated to the Secretary of the DENR under Executive Order No. 279, the DENR issued Administrative Orders Nos. 57, 82, and 82-A.

DENR Administrative Order No. 57 was issued on June 23, 1989 and was captioned "Guidelines of Mineral Production Sharing Agreement under Executive Order No. 279."[81] Under the transitory provision of DENR Administrative Order No. 57, all existing mining leases or agreements which were granted after the effectivity of the 1987 Constitution pursuant to Executive Order No. 211, shall be converted into production-sharing agreements within one year from the effectivity of the guidelines, except small scale mining leases and those pertaining to sand and gravel and quarry resources covering an area of 20 hectares or less.[82]

DENR Administrative Order No. 82 was issued on November 20, 1990, laying down the "Procedural Guidelines on the Award of Mineral Production Sharing Agreement (**MPSA**) through Negotiation."[83]

The constitutionality of Administrative Order Nos. 57 and 82 was questioned in *Miners Association of the Philippines, Inc. v. Factoran*,[84] on the grounds that said Administrative Orders were issued in excess of the DENR's rule-making powers, and were violative of the non-impairment clause. The Court, sitting *en banc,* upheld the constitutionality of both DENR Administrative Orders, ruling that there was no clear showing that the DENR Secretary exceeded the powers granted to him by Executive Order No. 279. The Court also found no violation of the non-impairment clause because "the privileges as well as the terms and conditions of all existing mining leases or agreements granted after the effectivity of the 1987 Constitution pursuant to Executive Order No. 211, shall be subject to any and all modifications or alterations which Congress may adopt pursuant to Article XII, Section 2 of the 1987 Constitution." [85] Hence, the strictures of the non-impairment clause do not apply to leases and agreements granted after the 1987 Constitution as

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80 Executive Order No. 279 (1987), Whereas clause, par. 4

81 Published in the July 3, 1989 issue of the Philippine Daily Inquirer, a newspaper of general circulation, and became effective on July 18, 1989.

82 *See Miners Association of the Philippines, Inv. v. Factoran,* 310 Phil. 113, 124 (1995) [Per J. Romero, *En Banc*].

83 Published in the December 21, 1990 issue of the Philippine Daily Inquirer, a newspaper of general circulation, and became effective on January 5, 1991.

84 310 Phil. 113 (1995) [Per J. Romero, *En Banc*].

85 *Id.* at 135.

the same may be amended, modified, or altered by statute passed by Congress to achieve the purposes of Article XII, Section 2 of the 1987 Constitution.

DENR Administrative Order No. 82-A, issued on December 3, 1990, amends a specific provision of the earlier DENR Administrative Order No. 82, which established the procedural guidelines for awarding MPSAs through negotiation. The primary objective of this amendment is to provide clarity on the basis for determining the Government's interim share in MPSA proposals, ensuring its alignment with the prevailing excise tax rates.[86]

In 1991, the *International Mining Annual Review* ranked the Philippines third for gold and fifth for copper, in terms of mineral endowment. However, in 1995, production was down, and the closure or marginalization of certain mines has brought about drastic retrenchment of the workforce. This presented such a serious situation that Congress was compelled to grant tax relief to the industry to help it keep its workers and enable it to survive the continuous shocks in the world market.[87]

While the tax incentives already in place were helpful, the legislature recognized that the passage of a unified legal framework for mining was necessary to revitalize the mining industry. Thus, Republic Act No. 7942, or the Philippine Mining Act, was enacted with the purpose of creating a unified legal framework and offering attractive incentives to encourage both domestic and foreign investment in the mining industry. In crafting this law, lawmakers sought not only to stabilize the industry, but also to provide immediate, tangible benefits through the application of its provisions on incentives and Government share. During the Senate deliberations, then Senator Francisco S. Tatad, in his Sponsorship Speech of Senate Bill No. 1639, the precursor of Republic Act No. 7942, noted that:

> The purpose of this bill is to revive the distressed mining industry and make it a major contributor to the country's economic development and growth. The enactment of this measure has become imperative following our decision to become truly globally competitive upon the ratification of the Agreement establishing the World Trade Organization. Its urgency derives from the fact that mining remains a most obvious non-performer, despite the fact that the Philippines remains one of the most heavily mineralized countries in the world, and that foreign direct investments in mining are on the uptrend in many parts of the world.
>
> Depressed world market prices, plus a regime of high excise taxes, and the absence of a mining law comparable to other countries in terms of [financial] incentives offered to investors have made mining a distressed industry. Although in 1991, the International Mining Annual Review

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86 DENR Administrative Order No. 82-A (1990).

87 III Record, Senate, 9th Congress, Third Regular Session (January 16, 1995).

ranked the Philippines third for gold and fifth for copper, in terms of mineral endowment, production is down, and the closure or marginalization of certain mines has brought about drastic retrenchment of the workforce. This presented such a serious situation last year that Congress was compelled to grant tax relief to the industry to help it keep its workers and enable it to survive the continuous shocks in the world market.

. . . .

But the tax relief, while necessary and entirely helpful, is not enough to fully revitalize the industry and make it truly competitive. Only the passage of the proposed bill, Madam President, can hope to do that.

The long-term development of the mining industry depends a great deal on the kind of mining law that is in place. Until now, mining practices have been governed by provisions of [Presidential Decree No.] 463 issued in 1974, Executive Order Nos. 211 and 279, and Administrative Order Nos. 57, 82 and 82-A, but not by a unified mining law.

The Constitution provides that all minerals are under the full control and supervision of the State and that exploration, development, and utilization of those resources may be undertaken by mineral production sharing agreements which are joint venture, co-production or production-sharing agreements with any Filipino citizen, corporation or[,] association at least 60 [%] of its capital owned by Filipino citizens. Or, alternatively, through [FTAAs] in which the President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration development and utilization of minerals.

Administrative interpretation of this constitutional provision has led to law suits and legal questions which have not been satisfactorily resolved at this point. This is where legislation must now come in to provide clear and stable laws as well as implementing rules and regulations so as to ultimately attract direct foreign investments which are now waiting for those guidelines.

. . . .

Given the present provisions of the bill, ...We are very confident that the mining industry could be relied upon to perform a significant role in the economic turnaround. In the recent reports by the Executive Department, we noticed that all the industries are performing very well, but there is one negative performer and that is the mining industry. We are convinced there is no reason for this to continue. We are convinced that the mining industry deserves to perform better especially since world market prices have begun to improve, the technology is available, and there are large investors waiting on the wings, waiting for the passage of this very important measure.[88]

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[88] III Record, Senate, 9th Congress, Third Regular Session (January 16, 1995).

Republic Act No. 7942 or the Philippine Mining Act of 1995, was signed into law by then President Fidel V. Ramos on March 3, 1995. It sought to implement Article XII, Section 2 of the Constitution.[89]

The declared policy of Republic Act No. 7942 is "to promote... rational exploration, development, utilization[,] and conservation [of all mineral resources] through the combined efforts of government and the private sector in order to enhance national growth."[90]

Republic Act No. 7942 served to amend or modify the terms of the subject FTAA

In its Petition docketed as G.R. No. 263004, Oceanagold contends that, with the passage of Republic Act No. 7942, the terms of the FTAA, specifically with respect to the provision on the government's share, have been amended or modified. It cites Section 112 of Republic Act No. 7942 in arguing that the changes in fiscal incentives introduced in the said law were made to retroactively apply to the FTAAs executed prior to its enactment. Oceanagold further cites the landmark case of *La Bugal-B'laan Tribal Association, Inc. v. Ramos*[91] in support of its view that there is no requirement that the payment of excise tax be detrimental before it can be recovered.[92]

Oceanagold's arguments are meritorious.

Section 112 of Republic Act No. 7942, which Oceanagold invokes as the basis for the retroactive application of the said law, does not cover, on its face, FTAAs. The provision reads:

> Section 112
> Non-Impairment of Existing Mining/Quarrying Rights
>
> *All valid and existing mining lease contracts, permits/licenses, leases pending renewal, mineral production-sharing agreements* granted under Executive Order No. 279, at the date of effectivity of this Act, shall remain valid, shall not be impaired, and shall be recognized by the Government: *Provided*, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and of Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor unless the mining lessee or contractor indicates his intention to the secretary, in writing, not to avail of said provisions: *Provided, further*,

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89 *Id.*
90 Republic Act No. 7942 (1995), sec. 2.
91 486 Phil. 754 (2004) [Per J. Panganiban, *En Banc*].
92 *Rollo* (G.R. No. 263004), pp. 59–63.

> That no renewal of mining lease contracts shall be made after the expiration of its term: *Provided, finally*, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations. (Emphasis supplied)

The above-quoted provision expressly covers "existing mining/quarrying rights," particularly mining lease contracts, permits or licenses, leases pending renewal, and mineral production-sharing agreements, which term has a technical definition under Republic Act No. 7942. It refers to "a valid and subsisting mining claim or permit or quarry permit or any mining lease contract or agreement covering a mineralized area granted/issued under pertinent mining laws."[93] On the other hand, "FTAA" has its own definition under the law. It pertains to "a contract involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources."[94]

However, the same section also provides "[t]hat the provisions of Chapter XIV on government share in mineral production-sharing agreement and of Chapter XVI on incentives of this Act shall immediately govern and apply to a *mining lessee* or *contractor* unless the mining lessee or contractor indicates his intention to the Secretary, in writing, not to avail of said provisions." The terms "lessee" and "contractor" also have technical meanings under Republic Act No. 7942. "Lessee" means "a person or entity with a valid and existing mining lease contract."[95] On the other hand, "contractor" means "a qualified person acting alone or in consortium who is a party to a mineral agreement or to a financial or technical assistance agreement."[96] Thus, by including the term "contractor," Section 112 intended for the provisions of Republic Act No. 7942 on Chapter XIV on government share in mineral production-sharing agreement and of Chapter XVI on incentives to apply to FTAAs.

The same is also contained in the Implementing Rules and Regulations (**IRR**) of Republic Act No. 7942:

> CHAPTER XXX
> *Transitory and Miscellaneous Provisions*
>
> SECTION 272. *Non-Impairment of Existing Mining/Quarrying Rights.* —All valid and existing mining lease contracts, permits/licenses, leases pending renewal, Mineral Production Sharing Agreements, *FTAA* granted under Executive Order No. 279, at the date of the Act shall remain

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93 Republic Act No. 7942 (1995), sec. 3(p).
94 *Id.* sec. 3(r).
95 DENR Administrative Order No. 95-936 (1995), sec. 3(ag).
96 Republic Act No. 7942 (1995), sec. 3(g). Emphasis supplied.

> valid, shall not be impaired and shall be recognized by the Government: *Provided, That the provisions of Chapter XXI [of the IRR or Chapter XIV of Republic Act No. 7942] on Government share in Mineral Production Sharing Agreement and of Chapter XVI on incentives of the Act shall immediately govern and apply to a mining Lessee or Contractor unless the mining Lessee or Contractor indicates its intention to the Secretary, in writing, not to avail of said provisions*: *Provided, further*, That no renewal of mining lease contracts shall be granted after the expiration of its term: *Provided, finally*, That such leases, Production-Sharing Agreements, FTAAs shall comply with the applicable provisions of these implementing rules and regulations. [97] (Emphasis supplied)

The IRR clarifies that the non-impairment clause also applies to FTAAs and includes the same mandate on the provisions of Chapter XIV on the government share in MPSAs and of Chapter XVI on incentives of the Act immediately govern and apply to a mining lessee or contractor.

Moreover, the FTAA itself contains a clause on Future Legislation in Section 20.2:

> Future Legislation. Any term and condition more favorable to the financial or technical assistance agreement and the mineral production sharing agreement resulting from the repeal or amendment of any existing law or regulation or from the enactment of a law, regulation, or administrative order shall inure to the benefit of the Contractor and such law, regulation, or administrative order shall be considered a part of this agreement. [98] (Underscoring in the original)

Thus, the enactment of Republic Act No. 7942, which aims to revitalize the distressed mining industry by creating a unified legal framework and offering attractive incentives to encourage both domestic and foreign investment,[99] is clearly a law that is beneficial to Oceanagold, and should therefore inure to its benefit.

It is clear that Section 81 of Republic Act No. 7942, which provides for the government share in FTAAs, including the supposed excise tax exemption of contractors during the recovery period, is included in Chapter XIV. Evidently, the new fiscal regime provided for under Section 81 immediately governed and applied to existing FTAA contractors, including Oceanagold, upon the effectivity of Republic Act No. 7942.

There is, however, a saving clause to this rule—that is, when the FTAA contactor indicates in writing to the DENR Secretary its choice not to avail of

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97 DENR Administrative Order No. 96-40 (1996), sec. 272.
98 *Rollo* (G.R. No. 251453), p. 185.
99 III Record, Senate, 9th Congress, Third Regular Session (January 16, 1995).

the said provision. In these consolidated cases, the records are bereft of any indication that Oceanagold has chosen not to avail of the new fiscal regime under Section 81. In fact, Oceanagold has argued in its Petition before the Court that it is a beneficiary of such new fiscal regime.[100]

In its Decision, dated May 31, 2022, the CTA *En Banc* cited the case of *Lepanto Consolidated Mining Co. v. WMC Resources Int'l. Pty.*[101] to support the view that Republic Act No. 7942 did not retroactively apply to FTAAs executed prior to the effectivity of the said law, which includes the subject FTAA here. There, the Court held that there is no express provision, or even an implication, in Republic Act No. 7942 that would make the law retroactively apply to the FTAA in that case. Thus, the requirement under Section 40 of securing the approval of the president of the Philippines on the transfer or assignment of an FTAA did not apply to the transaction in that case.[102]

It must be noted, however, that the lack of retroactive application of Republic Act No. 7942 is not a determinative factor in deciding these consolidated cases. Section 112 is clear that the new fiscal regime applicable to FTAA contractors shall govern and be effective upon the enactment of the said statute. By such instruction, the exemption from payment of excise tax during the recovery period under Section 81 of Republic Act No. 7942 was made applicable to existing FTAA contractors upon the effectivity of the law. However, as will be discussed later, Oceanagold was not yet in the recovery period when Republic Act No. 7942 became effective. Indeed, Oceanagold was still in its mineral exploration stage in 1995 and was not yet declared to be in the recovery period.[103] In examining whether Oceanagold complied with the requirements to avail of such exemption during the recovery period, reference must now be made to the relevant provisions of Republic Act No. 7942, which have superseded the terms of the FTAA in accordance with the first proviso of Section 112.

Effect of the application of Republic Act No. 7942 to the detriment requirement under the FTAA

Essentially, there are two important provisions in the FTAA that are at play with regard to the detriment requirement. The first provision, embodied in Section 11.2 of the FTAA, pertains to the recovery by Oceanagold of its pre-operating and property expenses for a certain period, after which the

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100 *Rollo* (G.R. No. 263004), pp. 59–66.
101 537 Phil. 473 (2006) [Per J. Chico-Nazario, First Division].
102 *Id.* at 486–487.
103 *Rollo* (G.R. No. 251453), p. 21.

government's share in Oceanagold's net revenue will begin to accrue. It reads:

> 11. 2 Recovery of Pre[-]operating Expenses, Property Expenses and Taxes Paid During the Recovery Period. The CONTRACTOR shall have a period of up to five [] Contract Years, counted from the Date of Commencement of Commercial Production[,] within which to recover its: (a) Pre[-]operating Expenses; and (b) Property Expenses incurred during the period in which Pre[-] operating Expenses are recovered, *after which period only shall the right of the GOVERNMENT to share in the NET REVENUE, as hereinafter defined, accrue.*[104]
>
> . . . .
>
> *All taxes*, duties, fees, costs, levies[,] and imposts *paid by the CONTRACTOR and which are detrimental to the CONTRACTOR's recovery of Pre[-]operating Expenses and Property Expenses during the five [] Contract Years contemplated in this Section shall be recoverable by the CONTRACTOR, whenever possible during the year(s) such expenditures were actually incurred. Any amount not recovered shall be deducted from the GOVERNMENT's Share* as more specifically provided in Section 11.5 of this Agreement, unless legislation is required to allow the necessary deductions, in which case the deductions shall be made only after the appropriate legislation has been passed.[105] (Emphasis supplied)

Evident from the above-quoted provision is that during the so-called recovery period, or the five contract years starting from the date of commencement of commercial production, Oceanagold is not obligated to remit the Government's share in its net revenue. Only after such period shall the government's share accrue.

The term "accrue" means "to come into existence as an enforceable claim."[106] Thus, the government's share in the net revenue of Oceanagold will only become an "enforceable claim" upon the lapse of the five-year recovery period.

However, in another paragraph of Section 11.2 of the FTAA, it is provided that a tax, that is detrimental to Oceanagold's recovery of pre-operating and property expenses, may be recovered, whenever possible, during the year such tax was paid. The provision is clear as to the inclusion of a specific qualifier—that the tax collected, even during the recovery period, must be *detrimental* to Oceanagold's recovery of pre-operating and property expenses.

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104 *Rollo* (G.R. No. 263004), p. 89.
105 *Id.* at 100.
106 *H. Villarica Pawnshop, Inc. v. Social Security Commission*, 824 Phil. 613, 630 (2018) [Per J. Gesmundo, Third Division].

Moreover, the FTAA contemplates a scenario where excise tax, which was collected by the government during the recovery period, may be recovered by Oceanagold. If recovery or refund is not feasible, then such payment may be deducted from the government's share in the net revenue.

The other important provision in the FTAA can be found in its Section 11.5 which, recognizes the scenario that the excise tax paid even during the recovery period may be deducted from the government's share in the net revenue of Oceanagold. The provision reads:

> 11.5 The GOVERNMENT's Share. . . .
>
> . . . .
>
> **The GOVERNMENT shall receive 60% of Net Revenue less the following** costs, **taxes**, duties, fees[,] and other expenses by the CONTRACTOR or otherwise **accrued by the CONTRACTOR in its books as an expense for any given Contract Year,** provided that payments made in the Contract Year of an expense accrued the previous Contract Year and already charged to the GOVERNMENT for the previous Contract Year shall no longer be chargeable:
>
> (a) **excise tax, including excise tax paid during the recovery of Pre[-]operating Expenses** as provided for in par. 1 of Section 11.2 of this Agreement[,] but which was not actually recovered by the CONTRACTOR from the GOVERNMENT during the raid period, for any amount paid by the CONTRACTOR which was not subject to deletion by the Board of Investments' incentives or other incentives laws, unless legislation is required to allow the deduction of excise tax, in which case the deduction shall be made only after the appropriate legislation has been passed[.][107] (Emphasis in the original)

Section 11.5 of the FTAA provides that 60% of the net revenue of Oceanagold will be shared to the government, while the 40% is retained by the former. However, the government's share will be deducted by the amount of excise tax that Oceanagold had paid, including excise tax paid during the recovery period. Thus, the FTAA recognizes that, even if the government's share in the net revenue will only accrue after the lapse of the recovery period, there is still that instance when excise tax may be paid by Oceanagold during the recovery period.

However, as previously discussed, Republic Act No. 7942, although enacted later than the FTAA, should also be applied. Of particular importance is Section 81 of Republic Act No. 7942, which reads:

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[107] *Rollo* (G.R. No. 263004), pp. 89–90.

Section 81
Government Share in Other Mineral Agreements

. . . .

The Government share in financial or technical assistance agreement shall consist of, among other things, the contractor's corporate income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws.

The collection of Government share in financial or technical assistance agreement shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive.[108] (Emphasis supplied)

Contrary to the CTA *En Banc*'s ruling, the requirement that a tax must be "detrimental" to Oceanagold's recovery of Pre-operating and Property Expenses is no longer applicable, as Republic Act No. 7942 explicitly allows for the recovery of these relevant expenses. While the FTAA provisions recognize Oceanagold's entitlement to recover excise taxes paid during the Recovery Period—either through a direct refund or by deducting the amount from the Government's share in net revenue—Republic Act No. 7942 further reinforces this entitlement. The law provides that the Government's share in the FTAA shall only commence *after* the contractor has fully recovered its pre-operating expenses, including exploration and development expenditures. Section 81 of Republic Act No. 7942 aligns with and strengthens the FTAA's framework by ensuring that Oceanagold is not prematurely burdened with tax obligations that could hinder its cost recovery during the Recovery Period.

It is a rule in statutory interpretation that the deletion of certain words or phrases indicates of an intention to change the law's meaning.[109] The authors of Republic Act No. 7942 did not impose a detriment requirement similar to that found in Section 11.2 of the subject FTAA when they drafted Section 81. Noticeably, there is nothing in Section 81 or in any other provision of Republic Act No. 7942 which imposes such requirement. Consequently, any excise taxes paid during the recovery period should be recoverable without the need to establish detriment, as the law itself grants this right unequivocally.

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[108] Republic Act No. 7942 (1995), sec. 81.
[109] *Obiasca v. Basallote*, 626 Phil. 775, 794 (2010) [Per J. Corona, *En Banc*].

This view is further supported by DENR Administrative Order 99-56,[110] which provided the guidelines in establishing the fiscal regime of FTAAs. Section 2(g) reads:

> g. Government Share
>
> 1. Basic Government Share. The following taxes, fees and other such charges shall constitute the Basic Government Share:
>
> a) *Excise tax on minerals*;
> b) Contractor's income tax;
> c) Customs duties and fees on imported capital equipment;
> d) Value added tax on the purchase of imported equipment, goods and services;
> e) Withholding tax on interest payments on foreign loans;
> f) Withholding tax on dividends to foreign stockholders;
> g) Royalties due the Government on Mineral Reservations;
> h) Documentary stamps taxes;
> i) Capital gains tax;
> j) Local business tax;
> k) Real property tax;
> l) Community tax;
> m) Occupation fees;
> n) All other local Government taxes, fees and imposts as of the effective date of the FTAA;
> o) Special Allowance, as defined in the Mining Act; and
> p) Royalty payments to any Indigenous People(s)/Indigenous Cultural Community (ies).
>
> From the Effective Date, the foregoing taxes, fees and other such charges constituting the Basic Government Share, if applicable, shall be paid by the Contractor: *Provided*, That above *items (a) to (g) shall not be collected from the Contractor upon the date of approval of the Mining Project Feasibility Study up to the end of the Recovery Period. Any taxes, fees, royalties, allowances or other imposts, which should not be collected by the Government, but nevertheless paid by the Contractor and are not refunded by the Government before the end of the next taxable year*, shall be included in the Government Share in the next taxable year. Any Value-Added Tax refunded or credited shall not form part of Government Share. (Emphasis supplied)

Thus, under the fiscal regime for FTAAs as implemented by the DENR, excise taxes should not be collected from FTAA contractors upon the date of approval of its Mining Project Feasibility Study until the end of the Recovery Period. In the event that excise taxes are collected during this period, the government shall refund the same to the FTAA contractor within the end of

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[110] Guidelines establishing the Fiscal Regime of Financial and Technical Assistance Agreements, December 27, 1999.

the next taxable year. If this is not applicable, the excise taxes thus paid shall form part of the Government Share in such period.

Evident from this interpretation by the DENR Secretary when DENR Administrative Order 99-56 was issued, is that excise taxes erroneously collected within the recovery period of the FTAA Contractor shall be refunded *sans* any mention of the detriment requirement. This contemporaneous construction of the DENR Secretary, who is the primary officer reposed with the authority to promulgate such rules and regulations necessary to implement Republic Act No. 7942,[111] is entitled to great weight by the Court.[112]

Section 81 of Republic Act No. 7942 has made it clear that FTAA contractors shall enjoy excise tax exemption during their respective recovery periods. To impose an additional requirement not present in the written statute contravenes the purpose that animated its enactment: to promote the mining industry and grant the necessary incentives to operationalize such objective. As succinctly held by the Court, "taxpayer-claimant should not be required to submit additional documents beyond what is required by the law; the taxpayer-claimant should enjoy the exemption it has, by law, always been entitled to."[113]

However, despite the non-application of the detriment requirement, as will be discussed in the following paragraphs, the excise taxes in G.R. No. 263004 were paid beyond the recovery period, precluding Oceanagold's entitlement to any refund.

Proper reckoning of the Recovery Period

In its Motion for Reconsideration[114] in G.R. No 251453, dated June 14, 2022, Oceanagold insists that the subject excise taxes collected from February to March 2013 and April to June 2013 were paid within the five-year recovery period.[115] Thus, the payment of such excise taxes should be refunded, as the same were erroneously collected.

Oceanagold submits that: (a) the failure to strictly comply with the timetable under the FTAA constitutes a mere slight or casual breach of

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111 Republic Act No. 7942 (1995), sec. 8.

112 *See Nestle Philippines, Inc. v. Court of Appeals*, 280 Phil. 548, 556 (1991) [Per J. Feliciano, First Division].

113 *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636, 657 (2016) [Per J. Brion, Second Division].

114 *Rollo* (G.R. No. 251453), pp. 360–382.

115 *Id.* at 361.

contract; (b) it was able to achieve the 15% production capacity only on February 26, 2013; (c) there is nothing in the FTAA that provides for the withdrawal of its entitlement on the full recovery of pre-operating expenses in the event it fails to comply with the FTAA's timeline; and (d) since the government did not rescind the FTAA pursuant to Section 19.2 of the FTAA, the obligations of the parties thereon, including the government's obligation to allow the Oceanagold to recover its pre-operating expenses, shall continue.[116]

The arguments are unmeritorious.

The Recovery Period is one of the tax incentives provided to contractors under Republic Act No. 7942. The purpose is to allow contractors to recoup their expenses in the pre-operation stage before mandating them to pay the government's share, which includes excise taxes. This is essentially a grace period extended to contractors in recognition of the fact that mining is a capital-intensive industry, and all risks are assumed by the contractor. As the Court recognized in the landmark case of *La Bugal-B'laan v. Ramos.*[117] "[r]esources valued in the tens or hundreds of millions of dollars, are invested in a mining project that provides no assurance whatsoever that any part of the investment will be ultimately recouped."[118]

Section 81 of Republic Act No. 7942 provides that the Government's share in the FTAA, which includes excise taxes, shall be collected after the contractor has fully recovered its pre-operating expenses, exploration, and development expenditures.

Evidently, as noted by the Court, Republic Act No. 7942 does not set a limit for the period of non-collection or a specific recovery period. However, DENR Administrative Order Nos. 95-23 and 96-40, both of which implement Republic Act No. 7942, consistently provide that the recovery period is five years from the date of commercial operation or until the date of actual recovery, whichever comes earlier. [119]

Section 214 of DENR Administrative Order No. 96-40 provides that:

Section 214. Government Share in FTAA. – [...]

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[116] *Id.* at. 370–371.

[117] *La Bugal-B'laan, Tribal Association, Inc. v. Ramos, et. al.,* 486 Phil. 754 (2004) [Per. J. Panganiban, *En Banc*].

[118] *Id.* at 876.

[119] *See* DENR Administrative Order No. 95-23 (1995), sec. 236; DENR Administrative Order No. 96-40 (1996), sec. 214.

. . . .

The collection of Government share shall commence after the FTAA Contractor has fully recovered its pre-operating, exploration and development expenses, inclusive. *The period of recovery which is reckoned from the date of commercial operation shall be for a period not exceeding five (5) years or until the date of actual recovery, whichever comes earlier.*[120] (Emphasis supplied)

Moreover, as observed by the Court, the term "commercial operation" is defined in reference to "commercial production," or the date "declared by the Contractor or as stated in the feasibility study, whichever comes first."[121] The pertinent provisions read:

Administrative Order No. 95-23

Chapter II

Section 4(g) "Commercial Production" refers to the production of sufficient quantity of minerals of sustained economic viability of mining operations reckoned from the date of commercial operation *as declared by the Contractor or as stated in the feasibility study, whichever comes first.* (Emphasis supplied.)

. . . .

Administrative Order No. 96-40

Chapter I

Section 5(i) "Commercial Production" refers to the production of sufficient quantity of materials to sustain economic viability of mining operations reckoned from the date of commercial operation *as declared by the Contractor or as stated in the feasibility study, whichever comes first.* (Emphasis supplied.)

Meanwhile, Section 11.2 of the FTAA provides that Oceanagold shall have up to five years counted from the date of commencement of commercial production to recover pre-operating expenses. Thus:

11. 2 Recovery of Pre[-]operating Expenses, Property Expenses and Taxes Paid During the Recovery Period. The CONTRACTOR shall have a period of up to five [] Contract Years, counted from the Date of Commencement of Commercial Production[,] within which to recover its: (a) Pre[-]operating Expenses; and (b) Property Expenses incurred during the period in which Pre[-] operating Expenses are recovered, after which period

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120 DENR Administrative Order No. 96-40 (1996), sec. 214.

121 *See* DENR Administrative Order No. 95-23 (1995), sec. 4(g), DENR Administrative Order No. 96-40 (1996), sec. 5(i).

> only shall the right of the GOVERNMENT to share in the NET REVENUE, as hereinafter defined, accrue.[122]

Section 2.14 of the FTAA also defines the Date of Commencement of Commercial Production, as:

> 2.14 'Date of Commencement of Commercial Production' shall mean the first day of the calendar quarter following the quarter in which production equals fifteen percent (15%) of the project's initial annual design capacity as outlined in the Declaration of Mining Feasibility as hereinafter defined.[123]

Clearly, under DENR Administrative Order Nos. 95-23 and 96-40, two dates are important to determine the reckoning of the recovery period: (a) the date declared as the start of commercial operation by the contractor or the date of commencement of commercial production, as defined under the FTAA; or (b) the date Oceanagold declared as the start of commercial production in its feasibility study, as defined under DENR Administrative Order Nos. 95-23 and 96-40. Whichever of the two dates comes earlier marks the start of the recovery period. According to the Administrative Orders, the reckoning point is not left solely to the discretion of the contractor but is objectively fixed as whichever of these two dates occurs first. This dual framework ensures a balance between allowing the contractor to manage operational realities, and safeguarding the government's right to timely receive its share of revenues. The mandate for the earlier date serves as the definitive start of the recovery period, preventing any undue delay in the contractor's financial obligations and upholding the regulatory framework governing mining operations.

In this regard, Oceanagold submitted a PDMF on March 15, 2005, stating that it found "sufficient Ore reserves and diluted resource of 23.7 million tonnes of 1.8g/t Au and 0.64% Cu ... and such ore reserves have been delineated to sustain the mining operation of the corporation for some 14 years," and that "mining operation... will process gold and copper at 2 million ton[s] per annum...." The same was approved by the MGB on October 11, 2005.[124]

On the other hand, Oceanagold insists that on March 27, 2013, it advised the DENR Secretary that "on February 2, 2013, the Didipio Project was able to mill 301,903 tonnes and achieve [] 15% production capacity." Thus, according to it, the "Date of Commencement of Commercial Production

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122 *Rollo* (G.R. No. 251453), p. 300.
123 *Id.*
124 *Id.* at 302.

in accordance with Section 2.14 of the FTAA is April 1, 2013, which is the first day of the second calendar quarter."[125]

On this point, the Court ruled that:

> [Oceanagold] had three years from the approval of its Partial Declaration of Mining Feasibility on October 11, 2005, or until October11, 2008, to develop and construct mining production facilities. After that, [Oceanagold] had to submit within 30 days another Work Program for three years for the actual production activities. [*Oceanagold*] *shall start commercial production.* Failure to begin production within the prescribed period is a substantial breach of the FTAA.[126] (Emphasis supplied)

However, it was only on March 27, 2013, or eight years from the approval of the PDMF when Oceanagold advised the DENR Secretary that it was able to mill 301,903 tonnes and achieve the 15% production capacity, and thus, Oceanagold claimed that the date of commencement of commercial production in accordance with Section 2.14 of the FTAA is April 1, 2013.[127] This claim is wholly erroneous.

Pursuant to the FTAA and based on the PDMF, Oceanagold should have commenced commercial operation and production in the fourth quarter of the year 2008. To be more precise, the PDMF was approved on October 11, 2005. Oceanagold had three years to complete the development of the mine, including the construction and production facilities, from the date of approval of the PDMF until October 2008. After which, the contractor shall commence actual production and had 30 days to submit a work program of such actual production for a period of three years. The Contractor shall further have 15 days to notify the government of such commencement of commercial production.

Based on the above, the commencement of the recovery period should have been in October 2008, which is the date earlier than the date of commencement of commercial production or the date declared by Oceanagold to be the start of commercial production, which is April 1, 2013. The relevant provisions of the FTAA read:

SECTION VII
FEASIBILITY STUDY AND RELINQUISHMENT

7.1 Mining Feasibility. During the Exploration Period, the CONTRACTOR shall conduct feasibility studies for any part of the

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[125] *Id.* at 301.
[126] *Id.* at 343.
[127] *Id.* at 301.

Exploration Contract area as may be warranted. At any time prior to six (6) months from the expiration of the Exploration Period, the CONTRACTOR, if it elects to transform the Exploration Contract Area into a Mining Area as provided in Section VIII of this Agreement, shall submit a Declaration of Mining Feasibility with a Work Program and Budget for development for the next succeeding three [] years, indicating therein the Mining Area.

Areas not delineated as part of the Mining Area shall be relinquished pursuant to the following section.

Failure of the CONTRACTOR to submit a Declaration of Mining Feasibility within the prescribed period shall be considered a waiver of the CONTRACTOR's right to transform the Exploration Contract Area into a Mining Area as provided in Section VIII of this Agreement.

. . . .

SECTION IX
MINE DEVELOPMENT AND CONSTRUCTION PERIOD

9.1 Timetable. *The CONTRACTOR shall complete the development of the mine, including the construction of production facilities, within [36] months from the date of the approval of the Declaration of Mining Feasibility, subject to such extension based on justifiable reasons as the Secretary may approve.*

9.2 Work Program and Budget. *The CONTRACTOR shall develop and construct the production facilities in the Mining Area in accordance with the Work Program* included in the Declaration of Mining Feasibility referred to in Section 7.1 of this Agreement, spending at least US[D] 50,000,000, less any amount of Exploration expenditures it has already spent.

. . . .

SECTION X
PRODUCTION PERIOD

10.1 Timetable. The CONTRACTOR shall submit to the Government, through the Secretary, copy furnished to the Director of the Mines and Geosciences Bureau, within [30] days from the completion of the construction facilities, a Work Program for a period of three [] years.

The CONTRACTOR shall commence Commercial Production according to the period(s) specified in the approved Work Program and the CONTRACTOR shall advise the Government within [15] days therefrom that Commercial Production has commenced.

Failure of the CONTRACTOR to commence Commercial Production within the period, except as may be excused by Force Majeure as stated in Section 20.4 hereof or other justifiable causes, shall be considered a substantial breach of this Agreement.[128] (Emphasis supplied)

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[128] *Id.* at 302–304.

Moreover, in BIR Ruling No. 10-07, dated May 4, 2007, Oceanagold represented that it was "expected to start commercial operations in June 2007, which was, however, extended to December 2007; that [the] initial commercial production is now expected to commence on the *4th quarter of 2008.*"[129] Under Article 1431 of the Civil Code, a representation is rendered conclusive upon the party making it, and it cannot be denied against the person relying on such representation.[130] The doctrine of estoppel is applicable here. Thus, Oceanagold is precluded from claiming a different starting date of the recovery period when it benefitted from the confirmation of tax exemptions under BIR Ruling No. 10-07 based on its own representations.

Having failed to comply with the pertinent provisions of the FTAA, Oceanagold cannot now seek a refund under the very same agreement it did not adhere to. Although it paid the excise taxes within the recovery period, it did not satisfy the conditions necessary to avail of the corresponding benefit. As the Court emphasized in the assailed Resolution, tax refunds must be construed in *strictissimi juris* against the party claiming the exemption.[131]

While the recovery period under the FTAA is undeniably a form of tax incentive aimed at fostering investment in the Philippine mining industry, it is not an unconditional privilege but rather one granted under specific and well-defined circumstances. The primary objective of this incentive is to contribute to the broader goal of national development. Although the contractor benefits from this provision, such benefit must be balanced against the paramount interest of the State. The overarching purpose of the recovery period cannot be undermined by allowing the contractor to exercise unchecked discretion in determining compliance with the FTAA provisions. It must be emphasized that taxes are the lifeblood of the government, and any undue delay in their collection affects the government's ability to deliver public services. [132]

The Court emphasizes that to fully benefit from the recovery period, the contractor must not only establish that the relevant taxes were collected or paid during the recovery period, but must also demonstrate compliance with all applicable legal and contractual conditions under the applicable FTAA, as well as with Republic Act No. 7942 and its IRR.

Applying the same framework to the excise taxes paid in G.R. No. 263004, the Court rules that Oceanagold failed to establish that the excise

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129 *Id.* at 304. Emphasis supplied.

130 CIVIL CODE, art. 1431 states:
Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

131 *Rollo* (G.R. No. 251453), p. 345.

132 *See Commissioner of Internal Revenue v. Yumex Philippines Corporation*, 902 Phil. 87, 100 (2021) [Per C.J. Gesmundo, First Division].

taxes were paid within the recovery period. Records show that the excise taxes were paid from June to December 2014, whereas the recovery period commenced in October 2008 and concluded five years later or in October 2013. Clearly, the payments were made beyond this prescribed period. While the Court acknowledges that the issue of the reckoning of the recovery period was not raised in the Petition—thus preventing Oceanagold from presenting evidence of compliance with the relevant legal and contractual conditions—it finds no compelling reason to grant further opportunity for such demonstration, as the excise taxes were indisputably paid beyond the recovery period.

To be precise, non-compliance with the timelines set under the FTAA cannot be regarded as a mere casual breach, as Oceanagold posits. The FTAA itself provides that the same is a substantial breach.

> SECTION X
> PRODUCTION PERIOD
>
> 10.1 Timetable.
>
> . . . .
>
> Failure of the CONTRACTOR to commence Commercial Production within the period, except as may be excused by Force Majeure as stated in Section 20.4 hereof or other justifiable causes, *shall be considered a substantial breach of this Agreement*.[133] (Emphasis supplied)

As a matter of fact, the FTAA recognizes the realities faced by the contractors by allowing the suspension of obligations to defer the recovery period under Section 20.4 of the FTAA. The same provides:

> 20. 4 Suspension of Obligations.
>
> (a) Any failure or delay on the part of any party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.
>
> (b) If Mineral Exploration and/or Mining Operations are delayed, curtailed or prevented by such Force Majeure causes, then the time for enjoying the rights and carrying out the obligations thereby affected, the term of this Agreement and all rights and obligations hereunder shall be extended for a period equal to the period thus involved.
>
> (c) The party whose ability to perform its obligations is affected (i) shall promptly give Notice to the other in writing of any such delay or failure in performance, the expected duration thereof, and its anticipated effect on the party expected to perform, and (ii) shall use its best effort to

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[133] *Rollo* (G.R. No. 251453), pp. 155–156.

> remedy such delay, except that neither party shall be under any obligation to settle a labor dispute.
>
> (d) This Agreement and the performance all the obligations of the CONTRACTOR under the same shall be deemed suspended if the prosecution of the CONTRACTOR's obligations under this Agreement is prevented by delays in obtaining approvals of the GOVERNMENT, both national and local, including statutory authorities, to any matter or aspect of this Agreement in which such approvals are necessary, provided that the delays are not due to the fault of the CONTRACTOR. [134]

Oceanagold would have been granted leeway under the terms of the FTAA had it sufficiently proven that it was compelled to halt operations due to escalating costs or uncertainties in the financial market and that the same is tantamount to *force majeure* under Section 20.4 of the FTAA. However, as ruled by the CTA *En Banc*, Oceanagold failed to present adequate evidence to substantiate its claims. Without such proof, it cannot now invoke the Court to take judicial notice as a last resort, and claim that "it may take as many as 11 years before a FTAA contractor can start commercial production."[135] Allowing such a proposition would render the timelines in the FTAA meaningless and open the door to untold abuse of the recovery period provision.

In sum, Oceanagold cannot be permitted to breach or manipulate the terms of the FTAA by arbitrarily postponing the commencement of commercial operations. Such an approach would effectively delay the start of the recovery period, resulting in an undue deferment of the government's rightful share of revenues. While fostering a favorable investment climate in the mining industry is vital, this cannot come at the expense of the State's fiscal stability or its long-term development objectives, not to mention the depletion of its finite resources. Hence, strict compliance with the terms of the FTAA is imperative in order to benefit from its fiscal incentives.

In conclusion, the request for a refund of excise taxes or the issuance of tax credit certificates in G.R. No. 251453, covering payments made from February to June 2013, and in G.R. No. 263004, for payments made from June to December 2014, are denied for lack of merit.

ACCORDINGLY, the Motion for Reconsideration in G.R. No. 251453 and the Petition for Review on *Certiorari* in G.R. No. 263004 are **DENIED**. The Resolution, dated February 15, 2022, of the Court in G.R. No. 251453 **STANDS AFFIRMED**. The Decision, dated May 31, 2022, and the

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[134] *Id.* at 185–186.
[135] *Id.* at 367.

Resolution, dated September 1, 2022, of the Court of Tax Appeals *En Banc* in CTA EB No. 2492, are also **AFFIRMED**.

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

MARVIC M.V.F. LEONEN
Senior Associate Justice

I dissent.
(Dissenting)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

(On official leave but left a concurring vote)
JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

(On official business)
ANTONIO T. KHO, JR.
Associate Justice

RAUL B. VILLANUEVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice