REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

JP MORGAN CHASE BANK, N.A. – PHILIPPINE CUSTOMER CARE CENTER, Petitioner,	**CTA CASE NOS. 7650, 7681 & 7722**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 13 2012 4:30 p.m.

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AMENDED DECISION

CASANOVA, *J.*:

For resolution is respondent's "***MOTION FOR PARTIAL RECONSIDERATION***" filed on January 5, 2012, with petitioner's "***COMMENT***" filed on February 8, 2012.

The *Motion* seeks for partial reconsideration of the *Decision* promulgated on December 16, 2011, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED. ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** the amount of **P88,425.45** to petitioner JP Morgan Chase Bank N.A.-Philippine Customer

> Care Center, representing unutilized input VAT from its domestic purchases of goods and services attributable to its effectively zero-rated sales for the period April to June 2005.
>
> **SO ORDERED**."

Respondent argues that petitioner was not yet a VAT-registered enterprise prior to August 10, 2005, which is the date that petitioner was issued with Certificate of Registration No. 9RC0000158857; thus, it is not entitled to any tax credit/refund of input VAT paid for the period April to June 2005. Respondent further contends that petitioner is engaged in the business of providing services which it claimed as zero-rated sales only in December 2005, as shown by petitioner's Quarterly VAT Return for the 2nd Quarter of Taxable Year 2005[1]. Thus, for the period April to June 2005, petitioner had no zero-rated transactions and that its input taxes incurred for the said period are not directly attributable to its zero-rated sales.

On the other hand, petitioner counters that the expenses incurred from April to June 2005, refer to start-up or pre-organization costs for which it duly paid input VAT and which it may validly claim as an input tax deduction. Petitioner also points out that Revenue Memorandum Circular (RMC) No. 42-03, dated July 15, 2003, recognizes that "taxpayers with no reported sales (companies on a pre-operating stage) may submit their claims for input taxes during the pre-operating stage with the BIR office where the taxpayer is registered", and that "in processing the claim, the Revenue Officer must determine if VAT was paid by the purchaser-claimant in the acquisition of the property, plant or equipment, as well as other fixed assets."

[1] Exhibit "C".

Petitioner finally avers that all the revenues generated from April 2005 to May 2007 were derived from services rendered to only two customers, Chase Bankard Services, Inc. (CBS) and Chase Home Finance LLC (CHF). Sales to the said entities were held zero-rated sales in the assailed Decision; hence, the input taxes attributable thereto may be proper subjects of refund.

After a careful and thorough re-evaluation of the relevant facts and stipulations of the parties, this Court finds merit in the motion and hereby reconsiders the assailed Decision.

Undisputedly, petitioner based its claim for refund on 112(A) of the National Internal Revenue Code of 1997, as amended, which reads:

> "**SEC. 112. Refunds or Tax Credits of Input Tax. —**
>
> **(A)** ***Zero-rated or Effectively Zero-rated Sales***. — **Any VAT-registered person**, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales." (*Emphasis supplied.*)

To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) **the taxpayer is VAT registered**; (2) the a taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas' (BSP) rules and regulations; (8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.[2]

At the onset, petitioner has to prove, among others, that it is a VAT-registered taxpayer before it can claim refund for its unutilized input VAT.

In the instant case, a perusal of the records shows that petitioner was registered with the Bureau of Internal Revenue (BIR) as a value-added (VAT) taxpayer on August 10, 2005[3], as evidenced by the BIR Certificate of Registration OCN 9RC0000158857. Clearly, prior to such date, petitioner is not yet a VAT registered taxpayer as contemplated under Sections 108(B)(2) and 112(A) of the 1997 National Internal Revenue Code (NIRC), as amended.

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[2] San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.

[3] Par. 3, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 137; Exhibit "B"; and Exhibit "ZZZ" Judicial Affidavit of Ms. Madelaine M. Licayan, Docket (CTA Case No. 7650, Vol. 1), pp. 220-221.

In the assailed Decision, respondent was ordered to refund the amount of P88,425.45, representing petitioner's unutilized input VAT. However, as correctly argued by respondent, the said amount covered input VAT payments for the period April to June 2005, or before petitioner became a VAT-registered taxpayer on August 10, 2005. Therefore, petitioner failed to meet the first criteria that "the taxpayer is VAT registered" during the covered period from April to June 2005.

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting exemption from tax are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[4]

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration* is hereby **GRANTED** and this Court's *Decision* dated December 16, 2011, partially granting petitioner's claim for refund in the amount of **P88,425.45**, representing unutilized input VAT from its domestic purchases of goods and services attributable to its effectively zero-rated sales for the period April to June 2005, is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[4] Sea-Land Services Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, 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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice