REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AICHI FORGING COMPANY OF ASIA, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5750

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 02 2001

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DECISION

This is a Petition for Review which seeks the Refund or issuance of a Tax Credit Certificate in the amount of EIGHTEEN MILLION SEVEN HUNDRED FORTY NINE THOUSAND TWO HUNDRED EIGHTY SIX & 74/100 PESOS (P18,749,286.74) allegedly representing the unutilized input value-added taxes (VAT) for the period January 1, 1997 to March 31, 1998.

The facts of the case as drawn from the "Joint Stipulation of Facts and Issues" submitted by the Parties are as follows:

"1. Petitioner is duly registered as a value-added taxpayer in accordance with Section 107 of the Tax Code, as amended.

2. For the period January 1, 1997 to March 31, 1998, Petitioner filed its quarterly VAT returns with the Bureau of Internal Revenue (BIR) which reflected input taxes in the amount of Eighteen Million Seven Hundred Forty Nine Thousand Two Hundred Sixty Eight and 74/100 Pesos (P18,749,268.74) which represent input taxes incurred in connection with Petitioner's domestic purchase of capital goods and services.

3. On January 28, 1999, Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue (BIR) District Office in San Pedro, Laguna together with the official receipts and invoices evidencing the importation and domestic purchase of capital goods and services.

4. Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Bo. Pulong, Sta. Cruz, Sta. Rosa, Laguna.

5. Petitioner is principally engaged in the manufacture, production and processing of all kinds of steel and steel by-products, more particularly, but not limited to close impression die steel forging and all automotive steel parts.

6. Petitioner has duly filed the instant Petition for Review within the two-year prescriptive period prescribed by then Section 230 of the Tax Code."

(Joint Stipulation of Facts and Issues, CTA records, pp. 35-36)

Detailed as follows are the input taxes allegedly incurred by Petitioner on its importation and domestic purchase of goods and services in connection with the company's expansion program, thus:

Period Covered	Importation and Domestic Purchases of Capital Goods and Services related to the Company's Expansion Program	Input Taxes
(1997)		
1st	P10,324,750.93	P 1,032,475.07
2nd	38,470,358.90	3,847,035.84
3rd	80,623,710.92	8,062,370.25
4th	46,652,544.29	4,665,254.58
(1998)		
1st	P11,421,510.00	P 1,142,151.00
	TOTAL	P18,749,286.74

Petitioner alleges that the aforementioned input taxes have not been fully offset against any of its output tax liability hence it filed an administrative claim for refund with the Bureau of Internal Revenue on January 28, 1999, submitting therewith various documents to prove its claim.

However, as of the present date, Respondent has not acted upon Petitioner's claim for refund. Hence, Petitioner filed with this Court the instant Petition for Review on March 26, 1999, in order to toll the running of the two-year prescriptive period so required by the Tax Code.

For his part, Respondent opted not to present evidence to refute Petitioner's allegations and instead moved to submit this case for decision on the ground that he has no records of this case despite repeated requests with the Department of Finance' one-stop shop. (see TSN, August 7, 2000).

Thus, the issues to be resolved in this case as stipulated upon by the parties are as follows:

"1. Whether or not Petitioner incurred input taxes in the total amount of P18,749,268.74 (should be P18,749,286.74) in its importation and purchase of capital goods and services for the period January 1, 1997 to March 31, 1998.

2. Whether or not, as of the filing of the instant Petition for Review, Petitioner has unutilized input taxes in the total amount of P18,749,268.74 (should be P18,749,286.74) which have not been offset against any output tax.

3. Granting that Petitioner has unutilized taxes in the amount of P18,749,268.74 (should be P18,749,286.74) whether or not Petitioner carried over such input taxes to the succeeding quarters.

(Joint Stipulation of Facts and Issues, CTA records, p. 36)

To begin with, the action elevated in this Court by the Petitioner draws its legal anchor from Section 112 (B) of the 1997 Tax Code which is hereunder quoted as follows:

> **"Section 112. Refunds or Tax Credits of Input Tax.-**
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> x x x x x x x x x
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> **(B) Capital Goods.-** A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

In resolving the aforementioned three (3) issues this Court finds it necessary to have a circumspect examination of all the documentary evidence, pertinent records as well as the relevant law and jurisprudence applicable in order to come up with a justifiable conclusion.

With respect to the first issue, Petitioner proved that it incurred input taxes on its importation and purchase of capital goods and services for the period January 1, 1997 to March 31, 1998 but only insofar as the amount of P18,509,503.50 out of the total claimed input taxes of P18,749,286.74.

The commissioned auditing firm, R.S. Bernaldo & Associates, through its Partner, Atty. Rosario S. Bernaldo, was commissioned by this Court pursuant to CTA Circular 1-95, as amended, to verify the accuracy of Petitioner's claim for refund. In its report dated November 9, 1999 (Exh. N), the said auditing firm stated that the claimed input taxes of P239,783.24 were not properly supported by VAT invoices/receipts, BOC import entries and revenue declarations as summarized in Exhibit Q and that only the amount of P18,509,503.50 represents Petitioner's valid input taxes paid on locally purchased and imported capital goods for the period January 1, 1997 to March 31, 1998.

This Court found the report of R. S. Bernaldo & Associates to be in order upon review of Petitioner's documents such as suppliers invoices/official receipts, Bureau of Customs import entries and revenue declarations, bills of lading, SGS reports, bank settlement advices/debit memos, certifications from BPI (Exh. I) and FEBTC (Exh. J) of the customs duties and VAT paid by Petitioner on various importations and Petitioner's Summary of Capital Goods Purchased (Local & Importation) for the four quarters of 1997 and first quarter of 1998 (Exhs. O & P).

The above mentioned documents show that the purchases made by Petitioner for which input taxes were paid pertain to capital goods which as defined in Section 4.106-1(b) of Revenue Regulations No. 7-95 refer to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods and services. These capital goods consisted of payments for capital equipment (for importation) and machine installation costs – labor/materials, plant building expansion, building improvements, office equipment (for local purchases).

Except for the noted amount of P239,783.24 (Exh. Q), Petitioner complied with the substantiation requirements provided under Section 4.104-5 of Revenue Regulations No.7-95 as it established that:

1) the input taxes paid on its importation and local purchases of capital goods and services were made in the course of its trade or business;

2) the input taxes paid on its local purchases of capital goods and services were supported by valid VAT invoices and official receipts; and

3) the input taxes paid on its importation of capital goods were properly supported by pertinent documentary evidence.

Records show that Petitioner was originally registered with the BOI on June 28, 1974 as a preferred pioneer enterprise engaged in the production/manufacture of closed impression die steel forging (Exh. K). However, since Petitioner had to expand its operations due to an increase in its indirect export sales demand (TSN, July 21, 1999, pages 8 & 9), it was registered with the BOI on June 8, 1995 as a pioneer expanding producer of closed impression die steel forging (Exh. F). Likewise, Petitioner was granted by the BOI a Certificate of Authority (Exh. H) to import the capital equipment needed for its expansion program

Petitioner's input tax payments on imported and locally purchased capital goods and services in connection with its expansion program are considered made in the course of its trade or business contrary to Respondent's allegation. These capital goods and services are necessary in the regular conduct or pursuit of Petitioner's business of manufacturing closed impression die steel forgings.

Section 4.99-1 of Revenue Regulations No. 7-95 defines the phrase, "in the course of trade or business" as follows:

> "In the course of trade or business" means the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity."

Secondly, we found that the input taxes paid by Petitioner on its local purchases of capital goods and services are validly supported by pertinent documents. A perusal of all the various suppliers' invoices and official receipts submitted by Petitioner reveals that they contain all the necessary information required under Sections 113 and 237 of the 1997 Tax Code (formerly Sections 108 and 238 of the old Tax Code), thus:

> **"Section 113. - Invoicing and Accounting Requirements for VAT-Registered Persons. -** (A) Invoicing Requirements. - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
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> (1) A Statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
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> (2) The total amount which the purchaser pays or obligated to pay to the seller with the indication that such amount includes the value-added tax.
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> x x x x x x x x x"
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> **Section 237. - Issuance of Receipt or Sales or Commercial Invoices. -** All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered x x x issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise and nature of services: x x x

As to the third substantiation requirement, Petitioner was able to establish that the input taxes paid on its importation of capital goods were indeed paid by offering as evidence the various suppliers' invoices, Bureau of Customs import entries and revenue declarations, bills of lading, SGS reports, bank settlement advices/debit memos and certifications of customs duties and VAT paid by Petitioner for 1997 and first quarter of 1998 issued by the Bank of the Philippine Islands (Exh. I) and Far East Bank & Trust Co. (Exh. J).

Contrary to Respondent's allegation, Petitioner submitted not only bank settlement advices/debit memos and certifications of VAT payments issued by BPI and

FEBTC but also suppliers' invoices, Bureau of Customs import entries and revenue declarations, bills of lading, SGS reports in support of its claimed input taxes on importation of capital equipment.

With respect to the second main issue, Petitioner's quarterly VAT returns for 1997 and 1998 show that the claimed input taxes of P18,749,286.74 have not been offset against any output VAT liability and have remained unutilized as of the filing of the instant Petition for Review.

Apart from the claimed input VAT payments on capital goods of P18,749,286.74, Petitioner declared in its quarterly VAT returns for the first quarter of 1997 to the first quarter of 1998 the input VAT payments of P5,861,308.32 on regular purchases for a total of P24,610,595.06 corresponding to the amount of VAT payments both for capital goods and regular purchases. (Exhs. A, B, C, D, E, R, S & T & O).

While Petitioner had an output VAT liability of P2,638,472.88 on taxable sales of P26,384,728.71 as shown in its quarterly VAT returns for the same period, these were offset against Petitioner's input VAT payments of P5,861,308.32 on regular purchases and not on the claimed input VAT payments of P18,749,286.74 on locally purchased and imported capital goods.

Finally, as to the third main issue, although the claimed input taxes of P18,749,286.74 were carried over to the second quarter of 1998 (Exh. R), the same were deducted as "VAT Refund/TCC Claimed" from the total available input tax credits for the second quarter of 1998, thus, the claimed input taxes of P18,749,286.74 could no longer be carried over to Petitioner's 1998 third and fourth quarterly VAT returns (Exhs. S & T).

Respondent insists that under Section 110(A)(1)(a)(v) of the 1997 Tax Code the claimed input taxes should have been carried over to the succeeding quarters and applied against Petitioner's output VAT liability.

While it is true that under Section 110(A)(1)(a)(v) of the 1997 Tax Code, the input taxes paid by Petitioner on domestic purchases and importation of capital goods may be credited against its output VAT liability, the said input taxes however, may also be refunded at his option as provided under Section 110(B) of the same Code, thus:

> **"Section 110. - Tax Credits. -**
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> x x x x x x x x x
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> **(B) "Excess Output or Input Tax. -** If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person <u>may at his option be refunded or credited</u> against other internal revenue taxes, subject to the provision of Section 112. *"(underscoring supplied)*

Moreover, it is evident from the VAT returns that Petitioner's taxable sales are insignificant in amount as the output VAT thereon can very well be covered by Petitioner's input VAT payments on purchases of goods/services on its regular purchases, thus the input taxes on capital goods need not be carried over.

In sum, Petitioner is entitled to a refund of unutilized input taxes paid on capital goods as provided under Section 112(B) of the 1997 Tax Code but in a reduced amount of P18,509,503.49 computed as follows:

Amount of Claim			P18,749,286.74
Less: Disallowances (Exh. Q)			
	1.) No documents examined	P 10,215.61	
	2.) Sales Invoices/Official Receipts with TAN instead of TIN	39,500.55	
	3.) Not within the application period	155,728.00	
	4.) Other Deficiencies	34,339.09	239,783.25
Amount Refundable			P18,509,503.49

WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND** in favor of the Petitioner the reduced amount of **EIGHTEEN MILLION FIVE HUNDRED NINE THOUSAND FIVE HUNDRED THREE & 49/100 (P18,509,503.49)** representing the unutilized input taxes paid by Petitioner for the period covered January 1, 1997 to March 31,1998.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge