REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5377

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 24 1999

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DECISION

This is a petition for the refund or issuance of tax credit certificate in the amount of P12,776,989.61 representing unutilized input taxes paid from January to December 1994.

Petitioner is a domestic corporation duly organized and existing under Philippine laws. It is engaged in the business of smelting and refining copper and its by-products, which are mainly exported to Asian countries. As such, it is registered with the Export Processing Zone Authority (EPZA), now Philippine Export Processing Zone Authority (PEZA), and the Board of Investments (BOI). It is likewise registered with the BIR as a value-added tax entity with VAT Registration No. 66-1-000074.

On February 20, 1996, Petitioner filed an Application for Tax Credit/Refund of Value Added Tax Paid for the period January to December 1994 based on Section 106 (a) and (b) of the Tax Code which provides:

> SEC. 106. Refunds or tax credits of input tax.-(a) Export Sales.-An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
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> (b) Zero-rated or effectively zero-rated sales.-Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax."

There being no immediate action on the part of herein respondent and the two-year prescriptive period was about to expire, the instant petition was filed on April 22, 1996, claiming for the refund or tax credit of the amount of P11,733,331.99. On March 5, 1997, Petitioner filed an Amended Petition for Review as Petitioner allegedly realized that it had not correctly stated the amount of unused input VAT in its original petition which is actually P12,776,989.61. However, in the memorandum submitted by petitioner on December 1, 1998, the claim for refund was reverted to the original amount of P11,733,331.99 (see page 106, CTA records).

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Respondent, in his Answer, raised the following Special and Affirmative Defenses:

Special and Affirmative Defenses:

6. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid. (Manufacturer's Bank and Trust Company as Trustee of Gen. Trust Plan vs. Commissioner of Internal Revenue, C.T.A. Case No. 1053, November 29, 1965);

7. Petitioner failed to comply with the substantiation requirement under Revenue Memorandum Order No. 40-94 dated May 6, 1994 and Section 16 (c) (3) of Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88;

8. Petitioner has not shown proof that it has not applied the VAT input tax of P11,733,331.99 to any of its output tax liability for the period covered in its claim or any succeeding period;

9. In an action for tax refund/credit the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

10. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

11. Well-settled is the rule that claims for refund are construed against claimants since it partakes of the nature of an exemption from taxation.

The sole issue We are tasked to resolve is whether or not Petitioner is entitled to the refund sought on the basis of the evidence presented.

We find against herein Petitioner.

During the trial of this case, Petitioner presented various exhibits to bolster its claim, such as photocopies of its VAT registration certificate, EPZA and BOI certificates of registration, its letter-claim for refund filed with the Bureau of Internal Revenue, and invoices or receipts pertaining to its purchases of raw materials from its VAT suppliers. These exhibits were in turn identified by its witnesses, Conrado Robles and Emerita Garcia.

For unknown reasons, however, petitioner did not offer these exhibits in evidence.

Under Section 35 of the Rules of Court,

> "Section 35. Offer of Evidence.-The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

It is very clear from the aforequoted provision that Petitioner's presentation of exhibits on several occasions was rendered futile by its non-filing of a formal offer of evidence.

This being a claim for refund, Petitioner ought to convince this Court by clear and convincing proof of his entitlement to the refund sought. A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990, cited in Law of Basic Taxation, Aban, 1994 Ed.) Petitioner, by its failure to make a formal offer of its exhibits, utterly failed to prove its case as its claim for refund has nothing to stand on.

Respondent, on the other hand, was deemed to have waived his right to present evidence after having failed to appear for four (4) consecutive times in order to present

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his evidence. Respondent likewise failed to file his memorandum within the period given by the Court.

WHEREFORE, in view of all the foregoing, the instant petition is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals