Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALLEN ARTHUR (MANILA), Inc.,
Petitioner,

- versus -

C. T. A. CASE NO. 4609

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 06 1995

x - x

DECISION

This petition for review is a judicial claim for refund in the amount of P207,062.27 representing the input value-added tax allegedly paid by petitioner to the Bureau of Internal Revenue for the period March 1, 1989 to February 28, 1990.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines and registered with the Bureau of Internal Revenue as a value-added tax (VAT) taxpayer pursuant to Section 107 of the NIRC with VAT Registration No. 34-6-002489 (Exhibit "C") and is a registered export producer with the Board of Investments with Authority No. 228

dated September 20, 1977 (Exhibit "A"). The facts of this case which appear to be undisputed show that petitioner is engaged in the business of exporting toupees, wigs, wiglets, synthetic hairpieces to foreign clients in many parts of the world. It also supplies raw materials such as doll wigs to export-oriented BOI-registered enterprises that are used by these industries in the manufacture of their own products for export.

In a letter, dated December 26, 1990, and received by the VAT division of the BIR on December 27, 1990, petitioner filed a claim for refund in the amount of P201,960.21 (Exhibit "D") representing all the input taxes that it allegedly paid its suppliers from the period March 1, 1989 to February 28, 1990.

This claim for refund is anchored on Section 106(a) of the Tax Code which gives VAT-registered exporters the right to ask for a tax credit certificate or refund of the input tax it paid that are attributable to the goods exported to the extent that these taxes have not been applied to output tax.

This claim was not immediately acted upon by the respondent thus a petition for review reiterating its demand but a slightly larger amount of P207,062.27 was filed with this Court on May 13, 1991 to stop the running of the prescriptive period provided by Section 230 of the Tax Code.

The amount prayed for in the petition was a result of the computation made per VAT quarter as follows:

March 1 - May 31, 1989 (First Quarter)	P 60,209.37
June 1 - August 31, 1989 (Second Quarter)	59,620.86
September 1 - November 30, 1989 (Third Quarter)	47,797.11
December 1, 1989 - February 28, 1990 (Fourth Quarter)	39,434.93
T O T A L	P207,062.27

(Exhibits "E", "F", "G" and "H")

To establish the fact that the goods were actually shipped and delivered abroad to foreign buyers, petitioner presented photocopies of the airway bills (Exhibits "J" to "J-495") as evidence. Furthermore, it presented photocopies of credit memos (Exhibits "K" to "K-156") issued by the receiving bank as proof that the foreign exchange proceeds derived from such sales were inwardly remitted in compliance with existing Central Bank regulations and Section 106(a) of the Tax Code. Twelve folders containing photocopies of VAT invoices were also offered as evidence to show the amount of the input taxes it paid during the aforementioned period.

Hearings on the above-entitled case proceeded but on August 12, 1994 when this case was still pending decision, respondent issued a check payable to petitioner in the amount of P167,641.89 representing the amount granted as a refund for the period covered by this petition. Dissatisfied, petitioner, on August 30, 1994, filed a Manifestation and Motion acknowledging the receipt of the amount granted by respondent but still praying for the amount of P39,420.38 which corresponds to the difference between the amount already granted and that which was originally prayed for, computed for clarity, thus:

	Amount prayed for in Petition	P207,062.27
Less:	Amount granted to Petitioner	167,641.89
	Amount sought to be refunded	P 39,420.38

The sole issue for determination is whether or not petitioner is entitled to the remaining amount of P39,420.38 which allegedly represents the input VAT paid that are attributable to the goods exported during the aforestated period.

The pertinent provision of the Tax Code relied upon by the petitioner is quoted hereunder:

> **SECTION 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.

Corollary to this above-cited provision is Section 100(a) which provides in part, thus:

> **SEC. 100.** *Value-added Tax on sale of goods* - (a) Rate and base of tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: Provided, that the following sales by VAT-registered persons shall be subject to 0%:
>
> 1) export sales; and
>
> 2) sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.
>
> "Export sales" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the good so exported, or foreign currency denominated sales. "Foreign currency denominated sales" means sales to nonresidents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign

currency remitted through the banking system in the Philippines.

A perusal of Section 106(a) of the Tax Code and Revenue Regulation No. 3-88, dated April 7, 1988, shows that a refund or the issuance of a tax credit certificate on input taxes paid shall be granted upon compliance with the following requirements:

1) the exporter must be VAT-registered;

2) An application for Tax Credit/Refund of value-added tax paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the City or municipality where the principal place of business of the applicant is located or directly with the commissioner, Attention: VAT Division;

3) A photocopy of the purchase invoice or receipt evidencing the value-added tax paid shall be submitted together with he application;

4) Photocopy of export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered;

5) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations;

6) That such input taxes paid has not been applied to output taxes;

7) The value-added tax (input tax) paid must be attributable to the goods exported.

It appears from the records of this case that the petitioner has complied with some of the aforecited requirements.

Petitioner has shown that it is VAT-registered and that it filed a claim for refund for the input taxes paid attaching therewith the pertinent documents required. Moreover, it presented photocopies of credit memos evidencing the inward remittance of the foreign exchange proceeds derived from its export sales. However, equally crucial to the grant of refund in this particular case is the requirement that the input taxes sought to be refunded must have been attributable to the goods exported during the period covered by the claim.

A careful analysis of the exhibits presented by the petitioner particularly the invoices showing the materials it purchased and upon which input taxes were allegedly paid reveal an entirely different picture. These VAT invoices (Exhibits "I" to "I-650") show that most of the supplies and materials purchased during the period covered were unnecessary to produce the wigs, wiglets and synthetic hairpieces it exported.

Webster's Third New International Dictionary defines "attribute" as:

> A quality intrinsic, inherent, naturally belonging to a thing or person.
>
> A necessary or essential quality or characteristic of substance.
>
> An object closely associated with and thought of as belonging to a specific person, thing or office.

The foregoing definition in relation to Sec. 106(a) of the Tax Code suggests that a refund of the input taxes paid shall be granted only if the goods and services purchased by the exporter and where input taxes were paid are directly and entirely attributable to the zero-rated transaction which in this case is export sales of wigs and synthetic hairpieces.

During the trial, respondent did not present any evidence to rebut the claim of the petitioner and opted not to submit her memorandum. The subsequent grant of P167,641.89 as refund during the pendency of this decision did not clarify this factual issue as counsel for respondent did not submit the examiner's report which allegedly contains findings for the disallowance of the claim of the petitioner (see page 239 of the CTA records.)

This Court had no other alternative but to scrutinize the evidence made available by petitioner. It was discovered that petitioner, in its computation of the refundable amount, included the input taxes paid in its purchase of medicines, television set, gas range, grocery items, office supplies, christmas lights and service fees for repair and maintenance of automobiles and similar other expenses which are not considered attributable to the goods exported, hence this court cannot allow the refund of the remaining sum of P39,420.38. The grant of refund privileges must be strictly construed against the taxpayer (**Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation**, 207 SCRA 549).

WHEREFORE, in view of all the foregoing, the claim for refund in the amount of P39,420.38 is hereby **DENIED**.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13 Article VII of the constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals