REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HITACHI COMPUTER PRODUCTS (ASIA) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5894

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 12 2001

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DECISION

The case at bar seeks the refund of the amount of P2,388,126.68 allegedly representing Petitioner's excess/unutilized creditable input value added tax (VAT) for the quarter ended June 30, 1997.

As represented, Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at Special Export Processing Zone, Laguna Technopark, Biñan, Laguna. It is registered with the Bureau of Internal Revenue (BIR) as VAT taxpayer with Certificate of Registration No. 94-570-000298, dated June 28, 1994 (Exhibit C). It is likewise registered with the Export Processing Zone Authority (EPZA) pursuant to the provisions of the Omnibus Investments Code of 1987 with Certificate of Registration No. 94-28, dated May 11, 1994 (Exhibit A) enjoying a six-year income tax holiday, as per EPZA Board Resolution No. 94-212 (Exhibit B).

On July 21, 1997, Petitioner filed with the BIR its VAT Return for the second quarter of 1997 (Exhibit D) showing, among others, an input tax from domestic purchases of goods and services in the total amount of P3,293,828.72.

On June 8, 1999, Petitioner filed with the BIR an Amended Quarterly VAT Return for the second quarter of 1997 (Exhibit E) declaring therein a lower amount of input VAT of P2,388,126.68.

On November 8, 1999, Petitioner again amended its VAT Return for the second quarter of 1997, showing therein not only the amount of P2,388,126.68 as its input VAT for said quarter but also the amount of P1,790,445,543.26 allegedly representing its total zero rated sales for the second quarter of 1997 (Exhibit F).

Pursuant to Revenue Audit Memorandum Order No. 2-93, Petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DOF) on June 25, 1999, an application for Tax Credit/Refund of its input VAT for the second quarter of 1997 in the total amount of P2,388,126.68 (Exhibit H).

The said one-stop-shop takes care of processing claims for refund or tax credit of exporters for and in behalf of the Respondent who is represented in the said Center by his revenue examiners. Respondent thru said center failed to approve within the two-year reglementary period this application for Tax Credit/Refund. Thus, Petitioner filed with this Court a Petition for Review on June 29, 1999, to prevent prescription.

Petitioner presents the proposition as reason of the petition for review that under Sections 106 (A) (2) (a) (1) and 112 (A) [then Sections 100 (a) (1) and 106 (a), respectively] of the Tax Code, quoted below, it is entitled to the refund of the aforementioned VAT input taxes. It said that its sales were all exports paid for in acceptable foreign currency, inwardly remitted to the Philippines and accounted for in accordance with the Rules and Regulations of the Bangko Sentral ng Pilipinas.

> **"Section 106. Value-added tax on sale of goods or properties.-** (A) *Rate and Base of Tax.*- There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> (1) x x x
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> (2) The following sales by VAT- registered persons shall be subject to zero percent (0%) rate:
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> (a) *Export sales.* – The term "export sales" means:
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> (1) The sale and actual shipment 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 goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with rules and regulations of the Bangko Sentral ng Pilipinas (BSP)"
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> **"Section 112. Refunds or tax credits of input tax.-**
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> (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; x x x"

In his Answer filed on July 14, 1999, Respondent interposed the following Special and Affirmative Defenses, thus:

> (1) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by Respondent's Bureau;
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> (2) The amount of P2,388,126.68 being claimed by Petitioner as alleged excess creditable VAT input taxes paid for the period May to December was not properly documented;
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> (3) In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
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> (4) Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit; and
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> (5) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

During the trial of the case, Petitioner presented testimonial and documentary evidence to prove that it is entitled to the refund prayed for in its Petition for Review. In the hearing held on November 15, 1999, Petitioner presented its Accounting Supervisor, Mr. Jonathan Capunitan, to testify on the facts stated in the Petition for Review. He related to the Court the nature of Petitioner's business and the grounds upon which it is claiming the instant VAT refund or tax credit. In the course of his testimony, he identified pertinent documents, namely: Petitioner's VAT Certificate of Registration, and its VAT Returns for the period, April 1, 1997 to June 30, 1997, which show the nature and details of its input VAT payments for the said period. He likewise testified that the amount of the instant claim for refund or tax credit of unutilized input VAT payments for the period, April 1, 1997 to June 30, 1997, amounting to P2,388,126.68, was not carried over to the third quarter of 1997 (Exhibit G).

Petitioner further presented and offered in evidence the pertinent photocopies of invoices and official receipts in support of its reported input taxes (Exhibits K-1 to K-81) and its Summary of Export Sales (Exhibits I-1 to I-7) and the supporting export documents, i.e., sales invoices, airway bills and export declarations/permits (Exhibits L-1 to L-173 and R-1 to R-519) to show that it actually generated export sales amounting to US$ 67,913,875.23 (with peso equivalent of P1,790,445,543.21). Petitioner also presented as evidence the Certifications issued by Pilipinas Bank and Rizal Commercial Banking Corporation (RCBC) to show that these banks received during the period in question inward remittances for export proceeds and that the same was credited to the account of Petitioner (Exhibits Q-1 to Q-3).

The independent Certified Public Accountant (CPA), Mr. Ruben R. Rubio of Sycip, Gorres, Velayo and Company (SGV & Co.) issued a Certification [Exhibits "N & P"] in accordance with CTA Circular No. 1-95, as amended by Circular No. 10-97, declaring therein, that out of Petitioner's total input VAT claim for the period, April 1, 1997 to June 30, 1997, amounting to P2,388,126.68 only the amount of P2,167,579.27 was properly substantiated and supported by documents in accordance with the existing VAT laws and their implementing rules and regulations. The independent CPA likewise certified that the inward remittances of foreign currency proceeds of Petitioner's export sales for the period, April 1, 1997 to June 30, 1997, were all accounted for, and corresponded to the reported amount of Petitioner's export sales for the same period.

On the other hand, Respondent did not present any evidence to rebut the claim of Petitioner and did not bother to present evidence to support his material allegations as well as his special and affirmative defenses.

Respondent, in his memorandum, argued that Petitioner being a PEZA registered enterprise is not subject to VAT. Respondent invoked Section 24 of Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995 (PEZA Law) which provides that PEZA registered enterprises are subject to 5% tax on gross income in lieu of national and local taxes. Respondent also invoked Section 103(q) of the 1995 Tax Code which provides that transactions which are exempt under special laws are exempt from VAT. Based on these two provisions of law, Respondent concluded that Petitioner is exempt from VAT and therefore is not entitled to the VAT refund sought.

The above issues raised by Respondent have already been settled in a previous similar case entitled, *Hitachi Computer Products (Asia) Corp. vs. Commissioner of Internal Revenue, CTA Case No.5651, dated February 2, 2001*, wherein this Court ruled:

> "On this point, we agree with the Respondent that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from the payment of VAT. However, We do not agree that the aforequoted provisos are applicable in the case at bar. First, Petitioner is under income tax holiday and is not remitting 5% of its gross income to the national government. Second, Section 103(q) of the Tax Code, as amended, specifically excepted, among others, transactions under Presidential Decree No. 66, from transactions which are exempt from VAT under special laws, hence Petitioner, being registered with the EPZA under the provisions of Presidential Decree No. 66 is not exempt from the payment of the value-added tax.
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> It bears stressing that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise, to wit:
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>> SEC. 23. Fiscal Incentives. – Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority, **<u>or</u>** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.

> Based on the aforequoted Section 23 of RA 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, is that provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second, as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax.
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> It must be pointed out that an ecozone enterprise cannot avail of these two sets of fiscal incentives at the same time. This was explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99 **(Read-Rite Philippines Inc. (Formerly Sunward Technologies Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000)**. Since Petitioner availed of the fiscal incentives under Executive Order No. 226, that is, an income tax holiday for six years starting from October 7, 1994 as evidenced by Certificate of Board Resolution No. 94-212 (Exh. L-1) it became subject to value-added tax."

Prefatorily, it must be pointed out that Petitioner has complied with the prescriptive period provided under Section 112 (then Sec. 106) in relation to Section 229 (then 230) of the Tax Code. It filed its administrative claim for refund with the OSS-DOF on June 25, 1999 (Exhibit H) and with this Court on June 29, 1999. Both dates fall within the two-year prescriptive period counting from July 21, 1997, the date when the Quarterly VAT return for the period April 1, 1997 to June 30, 1997 was filed with the Respondent (Exhibit D), hence under said circumstances, there can be no question as to the timeliness of the instant petition.

Hence, having settled the legal issues, the pivotal issue that comes second for our consideration is whether or not Petitioner has adduced sufficient evidence to prove its entitlement to the claimed refund/tax credit in the amount of P2,167,579.27 corresponding to the amount of input VAT recommended by the independent CPA to be refundable.

The Court finds no obscurity in the language of Section 106 (A)(2)(a)(1) [then Sec. 100 (a)(2)(A)(i)] of the Tax Code, *supra*, that would pose an ambiguity in its application. The provision itself furnishes the best means of its own exposition that the export sales of a VAT registered person which are paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with existing rules and regulations of the BSP are not subject to the 10% VAT but to a zero percent (0%) rate. Stated otherwise, a corporation or any entity who is a registered VAT entity, and who actually made export sales which are paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) will not incur any output VAT, as its sales are subject to zero percent (0%) VAT.

Evidence on record shows that Petitioner is a VAT registered enterprise (Exhibit C), who actually generated export sales amounting to US$ 67,913,875.23 (Exhibits I-1 to I-7, L-1 to L-173 and R-1 to R-519) which was inwardly remitted and accounted for in accordance with BSP rules and regulations (Exhibits P, J-1 to J-13 and Q-1 to Q-3) hence, doubt as to the status of the Petitioner as a zero-rated VAT enterprise is eliminated.

Moreover, Section 112(A) [then 106 (a)] of the Tax Code, quoted earlier, is explicit that the input tax attributable to the goods exported by a VAT-registered person is refundable/creditable to the exporter, provided such has not been applied to any output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the rules and regulations of the BSP. Thus, the right to claim refund of VAT input taxes by an exporter who is a VAT registered person is in order.

In the case at bar, since Petitioner was able to show (1) that it is indeed a zero-rated VAT enterprise, (2) that its export sales for the period in question were properly supported by sales invoices, Bank Credit Memos and Airway Bills , (3) that it received the total amount of $67,913,875.23 as inward remittance/payment from its importers during the period of April 1, 1997 to June 30 1997 (4) that total input taxes for the period April 1, 1997 up to June 30, 1997 in the total amount of P2,167,579.27, subject of this claim, were not carried over and applied against its output tax to the succeeding quarters (Exhibit O and O-1), (5) that said input taxes have not been applied to any VAT output tax, (6) that the said input taxes are properly supported by sales invoices and/or official receipts issued by Petitioner's suppliers, as certified by the Auditing Firm, SGV & Company. Considering the above and the fact that Respondent did not submit any documentary evidence to support its case, the Court is persuaded to grant the relief sought by Petitioner but in a lesser amount due to a disallowance by the Court of P22,358.18 as the same was not duly supported by VAT invoices/official receipts, the details and the breakdown of which are stated below:

Per Summary				Gross	Input VAT
Line Item	Page No.	Date	Supplier	Purchase	Claimed
7	1	5/2/97	Hi-Eles Corp.	P 5,940.00	P 540.00
21	1	4/7/97	PHPC Co., Ltd.	239,999.98	21,818.18
					P 22,358.18

Accordingly, the total allowable input taxes that should be granted to Petitioner as a refund or as tax credit should only be P2,145,221.09, computed as follows:

Amount per claim		P2,388,126.68
Less: Disallowances		
(a) Per SGV Verification (Exh. N)	P220,547.41	
(b) Per Courts Verification (Aforestated)	22,358.18	242,905.59
Amount Refundable		**P2,145,221.09**

IN THE LIGHT OF ALL THE FOREGOING, Respondent is hereby **ORDERED** to **REFUND** in favor of herein Petitioner the amount of P2,145,221.09 representing the latter's excess/unutilized VAT input taxes for the period April 1, 1997 to June 30, 1997. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
Associate 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