REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOWA INDUSTRY, INC.
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5540

Promulgated: JAN 08 1999

x - x

DECISION

This is a judicial claim for refund and/or issuance of tax credit certificate in the amount of ₱192,292.81 allegedly representing excess creditable input value-added taxes ("VAT" for brevity) paid for the second quarter of year 1995.

Petitioner is a domestic corporation located at Catarman, Liloan, Cebu, Philippines. It is engaged in the manufacture of finished world class furniture or part thereof which are entirely exported to the foreign market. As such, it is a VAT-registered taxpayer with respondent's Bureau and is, likewise, registered with the Board of Investments in accordance with the Omnibus Investments Code of 1987.

The facts are simple.

On May 20, 1997, petitioner filed an amended quarterly VAT return for the period April 1, 1995 to June 30, 1995 showing the following changes, to wit:

	Net Creditable Input Tax Original	Amended
*Previous Quarter's Input Tax	₱2,165,192.56	₱2,165,192.56
*Input tax from domestic purchases of goods and services	202,237.87	190,392.81
*Importation of goods	2,112.07	1,900.00
Total -	₱2,369,542.50	₱2,357,485.37

On June 30, 1997, petitioner filed its application for tax credit/refund of input VAT for the said second quarter of year 1995 as amended in the amount of ₱192,292.81 (₱190,392.81 + ₱1,900.00) with the Tax & Revenue Group of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance.

On the same date, however, and before respondent could act on the application, petitioner filed the present action with this Court allegedly in order to stop the running of the two-year prescriptive period for the filing of a claim for refund as provided in Section 230 of the Tax Code, and as declared by the Supreme Court in the case of **Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., 22 SCRA 12**. Hence, this petition for review.

At bar, petitioner restates its stance *a quo*. On his part, respondent raises the following special and affirmative defenses in his Answer, to wit:

> 5. The petition states no cause of action as it fails to allege the date when the tax sought to be refunded was paid (Manufacturer's Bank and Trust Co., vs. CIR, CTA Case No. 1659, November 29, 1965);
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> 6. The allegations that petitioner has creditable VAT input taxes does not ipso facto warrant a refund/tax credit;
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> 7. The alleged input taxes sought to be refunded were paid and collected pursuant to law and pertinent BIR implementing Rules and Regulations;
>
> 9. Petitioner must prove that the alleged input taxes attributable to the alleged capital goods have not been applied to the output taxes;
>
> 10. A claim for refund partakes of the nature of an exemption from taxation hence, the claim must be strictly construed against petitioner.

In his memorandum, respondent meticulously dwelt on the failure of the petitioner to state with exactitude the fact that it has filed its claim for refund or tax credit with respondent's Bureau ahead of the filing of the instant claim, which is a jurisdictional requisite provided in Section 230 of the Tax Code, considering that both claims were filed on the same day. It argued thus that this Court lacks jurisdiction over the case at bar.

Upon a circumspect appreciation of the preceding facts and arguments of the parties, this Court arrives at the following issues, namely:

> 1. Whether or not this Court has jurisdiction over the instant case; and,

2. Whether or not petitioner has proven with documentary and testimonial evidence the total amount of its claim.

Anent the first issue, this Court is of the opinion that herein case has fully satisfied the requirement laid down in Section 230 of the Tax Code insofar as the prior filing of a claim for refund with respondent's Bureau is concerned. Petitioner's allegation in its petition for review under paragraph 9 thereof that "[r]espondent has not yet approved" its application for refund clearly presupposes a priorly filed application with respondent's Bureau which however, has not *yet* been acted upon. It is important to note that before said paragraph 9, petitioner alleged under paragraph 6 of its petition the fact of filing of its application for refund with respondent's Bureau, which was admitted by the respondent in his Answer under paragraph 3 thereof. In the absence of actual and concrete evidence from the respondent that no claim for refund has been filed beforehand with his Bureau, this Court deems the particular allegation of the petitioner as truthfully said.

On the second issue, this Court finds the evidence of the petitioner to be insufficient to prove its claim for refund.

The applicable provision of law which establishes the requisites for a valid claim for refund or issuance of tax credit is hereunder quoted for better understanding, to wit:

> **SEC. 106.** ***Refunds or tax credits of creditable input tax.*** - (a) 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the *acceptable foreign currency exchange proceeds thereof had been duly accounted or in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP)*: *Provided*, *further*, x x x.
>
> "(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. (Italics and underscoring supplied)

Based on the above provisions of law, there is a need for the petitioner to show that the foreign currency exchange proceeds of its exportations have been duly accounted for in accordance with BSP regulations. Records at bar fail to reveal any evidence to this effect.

Likewise, petitioner only submitted a computerized summary or schedule of its input VAT (Exhibit A-1) which are the subject of the present claim but unfortunately failed to adduce in evidence the supporting copies of purchase invoices/receipts. In such regard, this Court has no means of verifying the veracity of the facts and figures stated in said schedule.

For one, the kind of goods purchased as contained in the receipts/invoices is important in determining whether it is really attributable to the particular export sale. Secondly, the invoices/receipts themselves are direct and real evidence of the amount of input VAT being claimed. A mere summary or schedule without accompanying documents proves nothing inasmuch as there is no way of ascertaining petitioner's assertions therein. Lastly, in the absence of petitioner's receipts/invoices, this Court cannot confirm whether the same are VAT invoices. It is clear from the provisions of Section 29, Chapter VI of Revenue Regulations No. 10-94 that only VAT invoices shall give rise to any input tax, thus:

> Only VAT-registered persons can print their TIN, followed by the word "VAT", which shall be their VAT registration number, in their invoices or receipts and this shall be considered as a "VAT Invoice". *All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.* (underscoring and italics supplied)

It must be stressed at this point that a refund of taxes partakes the nature of a tax exemption and are thus construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority (**Insular Co. vs. CTA, 104 SCRA 710; CIR vs. Rio Tuba Nickel Mining Corp., 207 SCRA 549**).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** due to 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 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