REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TAKENAKA CORPORATION PHILIPPINE BRANCH,
Petitioner,

C.T.A. CASE NO. 6490

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 07 2006

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DECISION

ACOSTA, E., P.J.:

Before Us is a Petition for Review under Section 9 of Republic Act No. 9282, seeking a refund or issuance of a tax credit certificate in the aggregate amount of Seventy Two Million Eight Hundred Sixty Five Thousand Six Hundred Sixteen Pesos and 85/100 (P72,865,616.85) representing petitioner's unutilized and unapplied input Value-Added Tax on domestic purchases of goods and services for the third and fourth quarters of taxable year 2000.

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Takenaka Corporation Philippines Branch ("petitioner") is a foreign corporation duly organized and existing under the laws of the Republic of Japan and licensed to engage in the business of general construction in the Philippines. It is a registered Value-Added Tax ("VAT") taxpayer as evidenced by certificate of registration bearing Taxpayer Identification No. 005-301-571-000.[1]

Under a subcontract agreement denominated as "On-Shore Construction Contract" with Philippine International Air Terminals Company, Inc. ("PIATCO"), petitioner undertook to construct the Ninoy Aquino International Airport Terminal III ("NAIA-IPT3 Project"). PIATCO is a corporation duly organized and existing under the laws of the Republic of the Philippines and registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone Developer/Operator pursuant to Republic Act No. 7916.[2]

On October 24, 2000 and January 25, 2001, petitioner filed its respective Quarterly VAT Returns for the third and fourth quarter of taxable year 2000 reflecting the following:

Quarter Involved	Exhibit	Date Filed	Total Available Input VAT
3rd Quarter	D	October 24, 2000	P 29,015,215.30
4th Quarter	G	January 25, 2001	P 74,315,259.31

On May 23, 2001, petitioner filed its amended Quarterly VAT Returns for the third quarter and fourth quarter of taxable year 2000 showing reduced input VAT payments in the amounts of P28,027,787.26 and P 73,327,831.27, respectively.[3]

On October 25, 2001, petitioner filed its Final Amended Quarterly VAT Returns declaring excess input VAT payments in the amounts of P28,068,217.38 and P44,797,399.47 for the third and fourth quarters of taxable year 2000, respectively, as follows:

Quarter Involved	Exhibit	Excess Input VAT
3rd Quarter	F	P 28,068,217.38
4th Quarter	I	P 44,797,399.47
Total		**P 72,865,616.85**

[1] Par. 2, Facts Admitted, Rollo, p. 66
[2] Pars. 3-4, Facts Admitted, Rollo, pp. 66-67
[3] Exhibits E and H

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On November 16, 2001, petitioner filed separate claims before the Bureau of Internal Revenue ("BIR") District Office No. 51 Pasay City for the refund or issuance of tax credit certificates of its unutilized input VAT payments in the amounts of P28,068,217.38 and P44,797,399.47 for the third and fourth quarters of taxable year 2000, respectively.[4]

On June 25, 2002, petitioner appealed before this Court due to the BIR's failure to act on its claims.

In Answer to the Petition, the Commissioner of Internal Revenue ("respondent") alleged, *inter-alia*, that petitioner failed to demonstrate that the tax was erroneously or illegally collected; taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable; it is incumbent upon the petitioner to show that it has complied with the provisions of Sections 204 and 229 of the Tax Code including Revenue Regulations No. 5-87 as amended by Revenue Regulations Nos. 3-88 and 7-95, as amended; claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation. Thus, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund or credit.[5]

The case was submitted for decision on October 14, 2005 with the following issues mutually agreed upon by the parties:

> ***"1. Whether or not Petitioner has an unutilized input VAT for the third and fourth quarters of taxable year 2000 in the aggregate amount of P72,865,616.85?***
>
> ***2. Whether or not Petitioner's sales of services and goods qualify as a zero-rated sales?***
>
> ***3. Whether or not Petitioner's claim for refund of alleged unutilized input VAT for the third and fourth quarters of taxable year 2000 are substantiated by documentary evidence?***
>
> ***4. Whether or not the alleged input tax was carried over to the next quarters?"[6]***

[4] Exhibits L, M, N to N-5, O to O-5
[5] Rollo, p. 48
[6] Joint Stipulation of Facts and Issues, Rollo, p. 68

We deem it proper to resolve first the issue of whether petitioner's sales of goods and services qualify as zero-rated.

As stipulated, petitioner entered into an On-Shore Construction Contract with PIATCO for the construction of the NAIA-IPT3 Project and that PIATCO is registered with the PEZA as an Ecozone Developer/Operator.[7]

Section 108(B)(3) of the 1997 National Internal Revenue Code ("NIRC"), as amended reads:

> **"SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –**
> **(A) x x x**
> **(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**
> **(1) xxx**
> **(2) xxx**
> **(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."**

In relation thereto, Revenue Memorandum Circular No. 74-99 provides:

> ***SECTION 3. Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise. –***
>
> **(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT System.**
>
> **This Circular shall serve as a sufficient basis to entitle to such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Certificate."**

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[7] Pars. 3 & 4, Facts Admitted, Rollo, pp. 66-67

In addition, VAT Committee Ruling No. 011-2003 dated January 13, 2003,[8] issued to petitioner's accountant SGV & Company on behalf of its client, the petitioner herein, confirms that petitioner's supply of goods, property or services to PIATCO is subject to zero (0%) percent VAT. To quote:

> ***"Therefore, the sale of goods and services rendered by Takenaka to PIATCO are subject to zero percent (0%) VAT and requires no prior approval for zero-rating based on RMC No. 74-99."***

Based on the above law, circular and ruling, petitioner's sales of goods and services to PIATCO are indeed subject to zero percent (0%) VAT.

A verification of petitioner's VAT invoices and official receipts reveals that its zero-rated sales/receipts in the amount of P791,524,077.57 reflected in its 3rd and 4th Quarterly VAT Returns for taxable year 2000,[9] represent service fees paid by PIATCO.[10]

However, a comparison of the total amount of zero-rated sales for the third and fourth quarters of 2000, as shown in the VAT returns with the amount reflected in the Schedule of Zero-Rated Sales[11] supported by petitioner's invoices and official receipts, which was verified by the commissioned independent CPA,[12] disclosed the following difference:

Per VAT Returns	P791,524,077.57
Per Schedule, Invoices, & Official Receipts	766,524,077.57
Difference	**P 25,000,000.00**

Thus, out of the reported zero-rated sales of P791,524,077.57 for the third and fourth quarters of taxable year 2000, petitioner was able to substantiate only the amount of P766,524,077.57.

Having already settled that its sales and services are subject to zero percent (0%) VAT, petitioner can therefore claim for the refund or issuance of a tax credit certificate of input taxes attributable thereto pursuant to Sections 110 and 112 of the 1997 NIRC, to wit:

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[8] Exhibit V
[9] Exhibits F & I, inclusive of submarkings
[10] Exhibits AA-1-1 to AA-13-164
[11] Exhibits CC-1 to CC-5

"SEC. 110. *Tax Credits.* –

xxx xxx xxx

(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 may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

"SEC.112. *Refunds or Tax Credits of Input Tax.* –

(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 (BSP); *Provided further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transaction, it shall be allocated proportionately on the basis of the volume of sales."

However, petitioner must still prove its claimed unapplied input taxes in the total amount of P72,865,616.85 with valid VAT invoices and official receipts.

The Court commissioned CPA, in its final report dated July 18, 2003,[13] summarized its findings and observations as follows:

Item	Nature	Exhibit Reference	Amount
1.	Input VAT on purchases of goods not claimed in the same quarter when the supporting VAT invoices are dated.	X-3 Item 2	P1,073,522.00
2.	Input VAT on purchases of goods supported by invoices printed *after* January 1, 1996 marked with the suppliers' "TIN V" and not "TIN VAT"	X-3 Item 3	11,185.88
3.	Input VAT on purchases of goods supported by invoices printed *before* January 1, 1996 marked with the suppliers' "TIN V" and not "TIN VAT"	X-3 Item 4	1,053,696.07
4.	Input VAT on purchases of goods supported by invoices	X-3	262.64

[12] Exhibits BB-1 to BB-3-a—CPA Report
[13] Exhibit W

	with the supplier's "VAT No." but not "TIN VAT"	Item 5	
5.	Input VAT on purchases of goods supported by invoices printed after January 1, 1996 marked with suppliers' "TIN-V" and stamped "TIN-VAT"	X-3 Item 8	2,455.46
6.	Input VAT on purchases of services not claimed in the same quarter when the supporting VAT Ors are dated	X-3 Item 15	254,923.80
7.	Input VAT on purchases of services supported by ORs printed *after* January 1, 1996 marked with the suppliers' "TIN V" and stamped "TIN VAT"	X-3 Item 16	51,177.24
8.	Input VAT on purchases of services supported by ORs printed *before* January 1, 1996 marked with the suppliers' "TIN V" and not "TIN VAT"	X-3 Item 17	3,454.55
	SUBTOTAL (A)		**P2,450,677.64**
1.	Input VAT on purchases of goods supported by invoices without "BIR permit to print"	X-3 Item 1	113.64
2.	Input VAT on purchases of goods supported by VAT invoices issued not in the Company's name	X-3 Item 6	13,116.35
3.	Input VAT on purchases of goods supported by invoices with stamped "TIN-VAT"	X-3 Item 7	1,880,732.80
4.	Input VAT on purchases of goods supported by photocopied VAT documents	X-3 Item 9	5,871.14
5.	Input VAT on purchases of goods supported by documents other than invoices (i.e., ORs, cash register tapes, provisional receipt, supermarket receipts, etc.)	X-3 Item 10	12,309.88
6.	Input VAT on purchases of goods without supporting documents	X-3 Item 11	186,886.41
7.	Overclaimed Input VAT on purchases of goods due to erroneous computation	X-3 Item 12	258,853.99
8.	Purchases of goods paid in foreign currency duly supported VAT invoices but input VAT was erroneously computed or the foreign exchange rate used does not tally with the prevailing interbank reference rate (IRR) *(amount shown in this table represents the overstatement)*	X-3 Item 13	33,144.40
9.	Input VAT on purchases of services supported by ORs without "BIR permit to print	X-3 Item 14	67,307.62
10.	Input VAT on purchases of services supported by ORs preprinted with the suppliers' "TIN-NON-VAT" and not "TIN VAT"	X-3 Item 18	9,736.05
11.	Input VAT on purchases of services supported by Ors marked with suppliers' "TAN" and not "TIN VAT"	X-3 Item 19	170,657.42
12.	Input VAT on purchases of services supported by VAT ORs issued not in the Company's name	X-3 Item 20	9,345.02
13.	Input VAT on purchases of services supported by VAT ORs with "TIN VAT" erased	X-3 Item 21	26.45
14.	Input VAT on purchases of services supported by photocopied documents	X-3 Item 22	296,136.23
15.	Input VAT on purchases of services supported by documents other than ORs (i.e., invoices, cash register tapes, express bill payment receipt, statement of accounts, guest check, Republic of the Phil. (ROP) OR, etc.)	X-3 Item 23	124,729.05

16.	Input VAT on purchases of services without supporting documents	X-3 Item 24	2,817.00
17.	Overclaimed Input VAT on purchases of services due to erroneous computation	X-3 Item 25	157.44
18.	Input VAT claimed on application of advance payments to subcontractors but supporting documents were not presented for our review	X-3 Item 26	2,995,359.92
19.	Purchases of services paid in foreign currency duly supported by VAT ORs but input VAT was erroneously computed or the foreign exchange rate used does not tally with the prevailing interbank reference rate (IRR) *(amount shown in this table represents the overstatement)*	X-3 Item 27	26,247.65
	SUBTOTAL (B)		**P6,093,548.46**
	Input VAT on purchases of goods and services deducted from the amount claimed by the Company	X-4	(326,296.16)
	Unaccounted Difference	X-4	1.44
	SUBTOTAL(C)		**P5,767,253.74**
	TOTAL (A+C)		**P8,217,931.38**

Petitioner subsequently submitted documents to support some of the purchases disallowed by the commissioned independent CPA. A perusal of the said documents shows that only the additional amount of P4,097,027.12 was properly substantiated by petitioner, to wit:

	Original Nature of Disallowance	Original Support	Replacement Invoice/OR	Amount Allowed
1.	Input VAT on purchases of goods supported by invoices with stamped "TIN-VAT"	Z-752-3 to Z-752-5 (Item 7)	DD-2 to DD-4	P1,880,732.80
2.	Input VAT on purchases of goods not claimed in the same quarter when the supporting VAT invoices are dated.	Z-49-3; Z-506-1 to 4 (Item 2)	DD-5 to DD-6	1,005,594.65
3.	Input VAT on purchases of services supported by ORs printed *before* January 1, 1996 marked with the suppliers' "TIN V" and not "TIN VAT"	Z-110-3, Z-11--2, Z-203-2, Z-54-2, Z-200-1 to 4 (Item 17)	EE-3 to EE-5, JJ-2 to JJ-3	1,053,678.62
4.	Input VAT on purchases of services supported by ORs preprinted with the suppliers' "TAN" and not "TIN VAT"	ZZ-803-2, Z-638-2, Z-693-2, Z-768-2 (Item 19)	FF-2 to FF-5	157,021.05[14]
	TOTAL			**P4,097,027.12**

[14] Only P32,645.48 of the claimed amount of P46,281.85 should be allowed since the total amount in the OR is only P359,100.30.

Thus, petitioner was able to support by proper VAT invoices and/or receipts input taxes in the amount of P68,744,712.59, computed as follows:

Claimed input taxes		P72,865,616.85
Less: Independent CPA's disallowance	P8,217,931.38	
Subsequent evidence of petitioner	(4,097,027.12)	4,120,904.26
Substantiated input taxes		**P68,744,712.59**

We now determine the issue of whether the claimed unutilized creditable input VAT for the third and fourth quarters of taxable year 2000 were carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the petitioner.

An examination of the evidence on records discloses that petitioner did not carry over its unutilized input VAT for the third and fourth quarters of 2000 to the succeeding quarters. This is evidenced by its amended 4th quarter return for 2000 and 1st quarter return for 2001 wherein the amount "0.00" was indicated in the space for "Input Tax Carried Over from Previous Quarter".[15] Considering that petitioner did not carry-over to the succeeding quarters its unapplied input taxes for the third and fourth quarters of 2000, the same remain to be unutilized.

However, records show that petitioner issued VAT O.R. No. 35 dated December 19, 2000 in the amount of P147,767.20 to Reliance Commodities, Inc. ("RCI").[16] Petitioner's Finance and Accounting Manager, Mr. Gregorio B. Forcadela, represented to the commissioned independent CPA that the said VAT O.R. was issued for petitioner's receipt of rental deposit refunded by RCI.[17] Hence, this was not declared for VAT purposes. Nevertheless, since a VAT O.R. was issued for the transaction, an output tax of P13,433.38 (P147,767.20/11) should be imputed thereto. Consequently, petitioner's unapplied input taxes should be reduced by P13,433.38 thereby leaving the amount of P68,731,279.21 (P68,744,712.59 less P13,433.38) as petitioner's unutilized input taxes.

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[15] Exhibits I-3 & U-1
[16] Exhibit AA-12-1

In sum, petitioner has sufficiently established its entitlement to the refund or issuance of a tax credit certificate of unutilized input VAT attributable to zero-rated sales for the third and fourth quarters of taxable year 2000 in the reduced amount of P66,560,426.76, computed as follows:

Zero-rated Receipts Substantiated by VAT Official Receipts	P766,524,077.57
Divided by Total Zero-rated Receipts per VAT Returns	791,524,077.57
Multiplied by Substantiated Unapplied Input Taxes	68,731,279.21
REFUNDABLE INPUT TAXES	P 66,560,426.76

WHEREFORE, premises considered, the petition is hereby ***PARTIALLY GRANTED***. Respondent is **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of Sixty Six Million Five Hundred Sixty Thousand Four Hundred Twenty Six Pesos and 76/100 (P66,560,426.76) representing unapplied or unutilized input taxes for the third and fourth quarters of taxable year 2000.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[17] Exhibit W, p. 9

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division