REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OVERSEAS OHSAKI CONSTRUCTION CORP.
Petitioner,

- versus -

C.T.A. CASE NO. 6347

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 25 2004

x - x

DECISION

This is a Petition for Review claiming for refund or issuance of a tax credit certificate in the amount of P5,827,801.48 alleged[ly] representing unutilized input value-added taxes paid on purchases of goods and services attributable to zero-rated sales for the third and fourth quarters of 1999.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 4/F Ferguson Park Tower, Plaza Ferguson, M. H. del Pilar St., Manila. It is engaged in the business of construction and as such it is registered with the Bureau of Internal Revenue as a Value-Added Tax (VAT) taxpayer pursuant to the requirements of then Section 107 of the National Internal Revenue Cod[e w]ith TIN No. 000-135-006 as shown by the Certificate of Registration No. IRC0000013395 (*pars. 1 & 3, Joint Stipulation of Facts and Exh. "A"*).

In 1998 and 1999, petitioner ent[e]red into agreements with Mitsumi Philippines, Inc., Dowa Hightech Philippines, Inc. and Katolec Philippines Corporation, all being PEZA (Philippine Economic Zone Authority) registered enterprises (*Exhibits D to F*), whereby petitioner shall provide construction services to these PEZA registered enterprises for the construction and maintenance of their factory and production plants located within the Zone (*Exhibits G, H & I*).

On February 4, 1999, petitioner was able to secure two separate approved applications for zero-rating with the Regulatory Operations, Monitoring Division of the Bureau of Internal Revenue for its construction services rendered to Mitsumi Philippines, Inc. and Dowa Hightech Philippines, Inc. from February 4, 1999 to December 31, 1999 (*Exhibits B & C*).

For the third and fourth quarters of 1999, petitioner allegedly had unapplied input VAT amounting to P5,827,801.48 which were all attributable to its zero-rated sales of services to the aforementioned PEZA registered entities: Mitsumi Philippines, Inc, Dowa Hightech Philippines, Inc. and Katolec Philippines Corporation.

On October 23, 2001, petitioner filed a letter with the BIR requesting for the refund or issuance of a tax credit certificate corresponding to its alleged unutilized input VAT payment of P5,827,801.48 for the third and fourth quarters of 1999 (*Exhibit N*).

As there was no action from the respondent and the two-year prescriptive period for filing a judicial claim was about to lapse, petitioner instituted the present appeal on October 24, 2001.

Respondent, in his Answer filed on November 27, 2001, raised the following Special and Affirmative Defenses:

> 3. Assuming but not admitting that petitioner filed an application for tax credit/refund of unutilized input taxes for the 3rd and 4th quarters of 1999, the same is subject to administrative investigation and resolution, hence, petition is premature;

4. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;

5. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code;

6. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue).

As jointly stipulated by the parties, the issues to be resolved by this court are:

1. Whether or not petitioner has unapplied or unutilized creditable value-added tax inputs for the third and fourth quarters of 1999 arising from its domestic purchases of goods and services which is a proper object of a claim for refund pursuant to Section 112 of the National Internal Revenue Code, as amended;

2. Whether petitioner's sale of services to Mitsumi, Inc., Dowa Hightech Philippines, Inc. and Katolec Philippines, Corporation, all being PEZA registered enterprises, are zero-rated for VAT purposes;

3. Whether or not the said creditable value added tax inputs of petitioner for the third and fourth quarters of 1999 are substantiated by documentary evidence in the form of invoices and official receipts; and

4. Whether or not said unapplied or unutilized creditable value-added tax inputs for the third and fourth quarters of 1999 were carried forward to the succeeding taxable quarter and applied against any of the value-added tax output of the petitioner for said period.

Anent the first issue, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

"**Section 112.** ***Refunds or Tax Credits of Input Tax.*** – xxx

"**(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 gaged 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 transactions, it shall be allocated proportionately on the basis of the volume of sales."

From the foregoing provision, in order to be entitled to the refund/tax credit of unapplied or unutilized input VAT, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that the input taxes are attributable to such zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. the claim for refund was filed within the two-year prescriptive period.

With reference to the first requisite, petitioner maintained that its sales of services to Mitsumi Philippines, Inc, Dowa Hightech Philippines, Inc. and Katolec Philippines Corporation, all being PEZA registered enterprises, for the third and fourth quarters of 1999 are zero-rated for VAT purposes pursuant to Section 108(B)(3) of the NIRC of 1997:

> "**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties. –***
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> xxx xxx xxx
>
> "**(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;
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> xxx xxx xxx
>
> "(3) <u>Services rendered to persons or entities whose exemption under special laws</u> or international agreements to which the

> Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate" (Underlining supplied).

Relative thereto, Section 4.102-2(c) of Revenue Regulations No. 7-95 defines what constitutes an effectively zero-rated sale of services for VAT purposes, to quote:

> "**(c) Effectivity zero-rated sale of services**. — Effectively zero-rated sales of services shall refer to the sale by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws, or international agreements. Under these Regulations, effectively zero-rated transactions shall be limited to the local sale of services to persons or entities who enjoy exemptions from indirect taxes under subpar. (b) Nos. (3), (4) and (5) of this section."

This court has ruled on several occasions that there are two sets of fiscal incentives available to a PEZA registered enterprise, namely: 1) incentives under Presidential Decree No. 66, as amended, and Section 24 of Republic Act No. 7916, which include the *special tax rate of 5% on gross income earned in lieu of national and local taxes*; and 2) incentives under Book VI of Executive Order No. 226, as amended, which include *income tax holiday for 4 to 6 years*, depending on whether the enterprise is registered as pioneer or non-pioneer. These two sets of incentives are in the alternative and cannot be availed of at the same time by a PEZA registered enterprise.

Accordingly, the sales of services by a VAT registered entity like herein petitioner to PEZA registered entities, which are subject to the special tax rate of 5%, are effectively zero-rated pursuant to Section 108(B)(3) of the NIRC of 1997.

In the case at bar, the various certifications issued by PEZA established that Mitsumi Inc., Dowa Hightech Philippines, Inc. and Katolec Philippines Corporation are all PEZA registered entities (*Exhibits D to F*). Petitioner was able to secure approved applications for zero rating relative to its sale of services from February 4, 1999 to December 31, 1999 to Mitsumi Philippines, Inc. and Dowa Hightech Philippines, Inc. pursuant to Section 4.107-1(d) of Revenue Regulations No. 7-95, to wit:

> "**(d) Application for effective zero-rating**. — Except for actual export sale, other cases of zero-rated sales in Sec. 4.100-3 and Sec. 4.102-2 (c) shall require prior application with the Revenue District Office for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt."

Thus, it may be concluded that Mitsumi Philippines, Inc. and Dowa Hightech Philippines, Inc. are under the 5% special tax regime and are accordingly, exempt from VAT. Consequently, petitioner's sales of services to these entities are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997. As regards petitioner's sales of services to Katolec Philippines Corporation, the same cannot be classified as zero-rated sales under Section 108(B)(3) of the NIRC of 1997 because petitioner failed to present an approved application for zero-rating and the court cannot ascertain from the records whether the said PEZA entity is availing of the 5% special tax rate or is exempt from VAT in accordance with Section 24 of R.A. 7916.

We proceed to the determination of whether or not petitioner was able to properly substantiate its reported zero-rated sales of services to Mitsumi Philippines, Inc. and Dowa Hightech Philippines, Inc. for the third and fourth quarters of 1999.

In its second amended VAT returns for the third and fourth quarters of 1999, petitioner's reported zero-rated sales amounted to P34,322,885.56 and P66,760,000.00 (*Exhibits R & S*), respectively, broken down in its Summary of Zero-Rated Sales (*Exhibit UU*) as follows:

Date	Customers	OR#	Per OR	Withholding Tax	Reported Zero-rated Sales
7/19/99	Mitsumi	4103	367,478.86	-	367,478.86
7/20/99	Mitsumi	4104	242,550.00	2,450.00	245,000.00
7/29/99	Mitsumi	4107	33,066,000.00	334,000.00	33,400,000.00
9/25/99	Dowa Hightech Phils., Inc.	4123	307,302.63	3,104.07	310,406.70
	Total for the Third Quarter		33,983,331.49	339,554.07	34,322,885.56
10/28/99	Mitsumi	4133	16,533,000.00	167,000.00	16,700,000.00
11/5/99	Katolec Phils., Inc.	4146	18,265,500.00	184,500.00	18,450,000.00
11/12/99	Kinden Phils., Inc.	4138	158,545.45	1,454.55	160,000.00
12/10/99	Mitsumi	4144	12,870,000.00	130,000.00	13,000,000.00
12/27/99	Katolec Phils., Inc.	4146	18,265,500.00	184,500.00	18,450,000.00
	Total for the Fourth Quarter		66,092,545.45	667,454.55	66,760,000.00

A scrutiny of the official receipts supporting petitioner's reported zero-rated sales to Mitsumi Philippines, Inc. and Dowa Hightech Philippines, Inc. for the third and fourth quarters of 1999 reveals that the same failed to comply with the invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95, which states:

> "SEC. 4.108-1. ***Invoicing Requirements***. – All VAT-registered persons shall, for every sale or lease of goods or properties or services, **issue duly registered receipts or sales or commercial invoices** which must show:
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> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the **word "zero rated" imprinted** on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> xxx xxx xxx
>
> Only VAT-registered persons are required to print their **TIN followed by the word "VAT"** 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" (*Emphasis supplied*).

Petitioner's official receipts do not bear the word "VAT' after the imprinted "TIN: 321-000-135-0006". Likewise, the word "ZERO-RATED SALES" was merely stamped instead imprinted on the face of each receipt. All of these are clear violations of the invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95.

Moreover, this court noted that the official receipts bear BIR Authority to Print dated April 23, 1992. The Transitory Provisions of Revenue Regulations No. 7-95 allowed the use of unused invoices/official receipts by taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT only up to June 30, 1996 subject to the compliance of certain requirements, *viz*:

> **"(c) Unused invoices or receipts**. — Taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT as a result of the implementation of RA 7716 should submit on or before January 31, 1996 an inventory of unused invoices or receipts as of December 31, 1995 indicating the number of booklets and the corresponding serial numbers. Unused non-VAT invoices/receipts shall be allowed for use in transactions subject to VAT provided the phrase "VAT-registered as of __________" is stamped on all copies thereof. Likewise, unused VAT invoices/receipts shall be allowed in VAT-exempt transactions provided the phrase "Non-VAT registered as of __________" is stamped on all copies thereof. These unused invoices or receipts with the proper stamp shall be allowed for use in transactions subject to VAT/NON-VAT up to June 30, 1996."

Clearly, upon its registration with the BIR as a VAT taxpayer on February 2, 1998 (*Exhibit A*), petitioner should have registered with the BIR another sets of booklets of official receipts containing all the required information under Section 4.108-1 of Revenue Regulations No. 7-95.

In fine, this court cannot consider the official receipts submitted by petitioner as valid proofs of its reported VAT zero-rated sales of services to Mitsumi

Philippines, Inc. and Dowa Hightech Philippines, Inc.. Accordingly, the VAT refund being sought for by petitioner cannot be granted.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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 Justice