REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EYELAND, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6346

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 23 2003

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DECISION

This case involves a claim for refund and/or tax credit in the amount of P5,115,500.00 allegedly representing unutilized creditable input value-added tax for the year 1999.

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office address at LIIP-SEZ, Mamplasan, Biñan, Laguna. It is registered with the Securities and Exchange Commission (SEC) principally to engage in the business of buying by purchase, lease as well as to mortgage, sell or otherwise dispose of, such lands and interests in lands.[1] It is a value-added tax (VAT) registered entity bearing Taxpayer Identification No. 005-749-669-000.[2]

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[1] Joint Stipulation of Facts, par. 1.
[2] Exhibit B.

On July 5, 1999, petitioner purchased from Optoland, Inc. a parcel of land located at Brgy. Mamplasan, Biñan, Laguna covered by Transfer Certificate of Title No. T-355502 for a total consideration of Fifty One Million One Hundred Fifty Five Thousand Pesos (P51,155,000.00), exclusive of VAT.[3]

On August 25, 1999, the seller Optoland, Inc. paid to the Bureau of Internal Revenue (BIR) the corresponding VAT due on said sales transaction in the total amount of Five Million One Hundred Fifteen Thousand Five Hundred Pesos (P5,115,500.00) through Rizal Commercial Banking Corporation (RCBC)-Binan Branch.[4]

Petitioner reported the said VAT as creditable input tax in its monthly and quarterly VAT returns.[5] It is the allegation of petitioner that since July 5, 1999 to date, it had no output VAT because all of its revenues were either exempted from VAT or zero-rated. For this reason, petitioner was not able to utilize the subject creditable input tax of P5,115,500.00.

Consequently, petitioner filed with the respondent a formal request for issuance of a tax credit certificate or tax refund in the total amount of P5,115,500.00 on September 3, 2001.[6]

Bearing in mind that the two-year prescriptive period was about to expire and respondent had yet to act on the said request, petitioner filed the instant petition on October 24, 2001.

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[3] Exhibit DD.
[4] Exhibits EE & EE-1.
[5] Exhibits C to AA, FF to HH, inclusive of submarkings.
[6] Exhibit BB.

Respondent, by way of an Answer, raised the following Special and Affirmative Defenses:

1) Petitioner's alleged claim for the issuance of a Tax Credit Certificate/tax refund is subject to administrative routine investigation/examination by respondent's Bureau;

2) Taxes paid and collected are presumed to have been paid in accordance with law, hence, not refundable;

3) Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions in Section 204(C) in relation to Section 229 of the Tax Code (RA 8224) x x x Otherwise its failure to prove the same is fatal to its claim for tax credit;

4) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211). They are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption (Asiatic Petroleum Co. vs. Llanes, 49 Phil. Rep. 466).

To support its case, petitioner submitted several documents and presented witnesses. Respondent, on the other hand, submitted the case for decision without presenting any evidence.[7] Nor did he submit a memorandum.

The parties jointly stipulated the issues to be resolved in this case, to wit:

(1) Whether or not the alleged unutilized input tax in the amount of P5,115,500.00 is duly substantiated;

(2) Whether or not the petitioner is entitled to the refund or tax credit of its unutilized input tax in the amount of P5,115,500.00;

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[7] CTA Records, page 189.

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(3) Whether or not the petitioner complied with the provisions in Section 204(C) in relation to Section 229 of the Tax Code (RA 8224).

Petitioner based its entitlement on the provision of Section 110(A)(2)(a) of the Tax Code, as amended, *viz*:

SEC. 110. ***Tax Credits.*** -

"(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties".

Petitioner avers that the creditable input tax of P5,115,500.00 was never utilized because it had no output tax against which said input tax could be credited. According to petitioner, all of its revenues were either exempted from VAT or zero-rated. Thus, it is entitled to the claim for refund or tax credit for such amount. This is in accordance with Section 4.106-1(c) of Revenue Regulations No. 7-95, which provides that:

(c) Land.- Only a VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes on land purchased to the extent that such input tax has not been applied to output tax. The application should be made within two (2) years after the close of the taxable quarter when the purchase was made.

Refund of input taxes on land shall be allowed to the extent that such land is used in VAT taxable business.

Petitioner is correct in its stand that a VAT-registered taxpayer may apply for the issuance of a tax credit certificate or refund of input taxes on land provided that an input tax has been paid on the purchase of such land and the same has not been applied to any

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output tax. Section 112(B) of the Tax Code, as amended, implemented by Section 4.106-1 of Revenue Regulations No. 7-95, provides:

> **Sec. 112.** ***Refunds or Tax Credits of Input Tax.*** **-**
>
> (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.

Thus, in view of the above provisions, the application must be made within two years after the close of the taxable quarter when the purchase was made and the land purchased must be used in VAT taxable business.

However, based on the documents presented, we find petitioner not entitled to the claim sought for. The certification dated February 28, 2002 issued by BIR RDO 57 certifying that Optoland, Inc. filed and paid the value-added tax in the amount of P5,115,500.00 for the period July 31, 1999 on August 25, 1999 at the RCBC, LIIP Branch, Mamplasan, Binan, Laguna (*Exhibit EE*), the detail of payment information based on BIR Collections and Bank Reconciliation System as of February 21, 2002 showing that Optoland paid the amount of P5,115,500.00 to RDO 57 (*Exhibit EE-1*) and petitioner's allegation in paragraph 6 of its Petition for Review to the effect that on August 25, 1999, the seller Optoland paid to the appropriate office of the Bureau of Internal Revenue the corresponding value-added tax (VAT) due on said sales transaction in the total amount of Five Million One Hundred Fifteen Thousand Five Hundred Pesos (P5,115,500.00) through Rizal Commercial Banking Corporation (RCBC) – Binan

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branch, all disclose that it was not petitioner but Optoland which paid the value-added tax of P5,115,500.00. Section 4.104-5 of Revenue Regulations No. 7-95 provides in part:

> **Section 4.104-5.** ***Substantiation of claims for input tax credit.*** - (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(1) and 238 of the Code. **Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.**

While the Deed of Absolute Sale executed by and between petitioner and Optoland, Inc. showed that the Value-Added Tax, among others, shall be borne and defrayed by the VENDEE (herein petitioner), there was no showing that petitioner actually shouldered the subject VAT of P5,115,500.00. Petitioner failed to submit the VAT receipt issued by the seller as mandated by the aforequoted section of Revenue Regulations No. 7-95 Nor was there any proof that petitioner paid the same amount to Optoland as VAT passed on to it. Payment to BIR was made through Optoland's Citibank Check No. 0070 dated August 25, 1999 (*Exhibits EE and EE-1*). Even in petitioner's letter-request filed with the BIR on September 5, 2001, it was admitted that the VAT due on said sale in the amount of P5,115,500.00 was remitted by Optoland, Inc., being the seller *(Exhibit BB).*

The value-added tax is an indirect tax and the amount of tax ***may be shifted or passed on*** to the buyer, transferee or lessee of the goods, properties or services,[7a] the

[7a] Section 105, Tax Code, as amended.

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operative phrase being *"may be shifted or passed on"*. Therefore, a seller may opt not to shift or pass on the burden to the buyer .

Unlike a direct tax, such as an income tax, which is primarily a tax on an individual aimed at his ability to pay as measured by his income or his net wealth, an indirect tax, such as the VAT, is levied on goods and services or transactions. It is capable of being shifted and therefore forms a substantial portion of consumer expenditures. The Tax Code defines VAT as an indirect tax not in the context of who is directly and legally liable for its payment but in terms of its nature as a tax on consumption.[7b] In other words, one of the most essential features of VAT is its being capable of being shifted or passed on to the ultimate consumer. Hence, the seller, though primarily and legally liable to pay the tax, may, by adding (or including) the tax to the selling price, shift the burden of the tax to the intermediate buyers and ultimately to the final purchaser.

In the case at bar, the fact of payment of the VAT is not an issue. Nor the fact that petitioner did not have any output VAT. Section 110(A)(1) provides that any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof shall be creditable against the output tax. Moreover, under Section 112(B), in relation to Section 4.106-1 of Revenue Regulations No. 7-95, earlier cited, 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.

[7b] The Value Added Tax in the Philippines, First Edition, V. Deoferio, Jr. & V. Mamalateo, pages 35 & 36.

However, before petitioner can claim for a refund of any unutilized input VAT it must first prove that Optoland, Inc. shifted or passed on the burden of tax liability to it. Petitioner failed to do so which is fatal to its cause. The payment and remittance made by Optoland of the value-added tax in the amount of P5,115,500.00 does not make it necessarily and automatically a payment of VAT by petitioner.

Indeed, petitioner submitted its monthly and quarterly VAT returns *(Exhibits C to AA, FF to HH, inclusive of submarkings)*, declaring the said amount as creditable input tax and the same was not utilized. Nevertheless, for petitioner to properly declare and claim an unutilized input tax, it must show that it paid the VAT. Petitioner failed to do so. To refund is to repay or restore; to return money in restitution or repayment.[8] There being no payment made by the petitioner, its right to be repaid or refunded never arose.

IN VIEW OF ALL THE FOREGOING, petitioner's claim for refund and/or tax credit of unutilized input VAT amounting to P5,115,500.00 is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

[8] Black's Law Dictionary, 6th Ed., page 1281.

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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

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