Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6338

Members:

Castañeda, Jr., *Chairman*
Uy, and
Palanca-Enriquez, *JJ.*

Promulgated:

JUL 18 2005 [signature]

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DECISION

UY, *J.*:

This is a Petition for Review of the denial by the respondent of petitioner's claim for the issuance of a tax credit certificate in the total amount of P27,383,274.98, Philippine Currency, allegedly representing the latter's unutilized input value-added tax paid on domestic purchases of goods/services and importation of capital goods allegedly attributable to its zero-rated sales for the period covering July 1, 1999 to September 30, 1999.

THE FACTS

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at No. 1321 Apolinario St., Bangkal, Makati City, Metro Manila, while respondent is the Commissioner of Internal Revenue vested by law to enforce and implement the provisions of the National Internal Revenue Code as well as the related statutes and their implementing rules and regulations, including, *inter alia*, the power to refund any internal revenue tax erroneously or illegally collected, holding office address at BIR National Office Building, Diliman, Quezon City (*pars. 1 & 2, Joint Stipulation of Facts and Simplification of Issues, Records, pp. 63-65*).

It appears that petitioner is registered with the Board of Investments as a preferred pioneer enterprise for the production/manufacture and export of tested and untested integrated circuits such as large scale integrated circuits and microprocessor with Certificate of Registration No. 85-1010 dated October 25, 1985 (*Exhibit "B", Records, p. 238*). It is likewise duly registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer with Registration Certificate bearing Registration No. 32A-3-002649 dated January 1, 1988 (*Exhibit "A", Records, p. 237*).

For the period covering July 1, 1999 to September 30, 1999, petitioner allegedly generated export sales in the amount of P1,032,221,636.36, Philippine Currency, which were paid for in acceptable foreign currency inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner believes that as a VAT registered entity, it is subject to zero-percent VAT on the aforementioned export sales pursuant to Sections 106(A)(2)(a)(1) and 108(B)(1) of the National Internal Revenue Code (NIRC) of 1997 and VAT Ruling No. 102(a)(1) 402-88. For the same period of July 1, 1999 to September 30, 1999, petitioner allegedly paid input VAT amounting to P27,383,274.98 on its domestic purchases of goods/services and importation of capital goods which were all attributable to its zero-rated export sales and which have not allegedly been applied against any output tax liability of petitioner for the said period or any succeeding quarter.

On October 25, 1999, petitioner filed its VAT return for the third quarter of 1999 reporting the alleged zero-rated export sales of P1,032,221,636.36 and unutilized input VAT payments of P27,383,274.98 (*Exhibit "E", Records, p. 241*), summarized as follows:

		INPUT VAT		
ZERO-RATED SALES	OUTPUT VAT	DOMESTIC PURCHASES	IMPORTATION OF GOODS	EXCESS
	(c)	(a)	(b)	(a) + (b) – (c)
P1,032,221,636.36	P 7,979.80	P17,873,689.78	P9,517,565.00	P 27,383,274.98

Relying on the provisions of Sections 112(A) and (B) of the NIRC of 1997 allowing the filing of claims for refund or tax credit of input tax, petitioner filed on October 25, 1999, an administrative claim with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for the refund/tax credit corresponding to its alleged unutilized input VAT for the third quarter of 1999 in the amount of P27,383,274.98, broken down as follows (*Exhibits " G & H", Records, pp. 243 and 244*):

Tax Paid on Imported/Locally Purchased Capital Equipment	P 9,517,565.00
Total VAT Paid on Purchases Per Invoices Received During the Period	17,865,709.98
	P 27,383,274.98

As the two-year prescriptive period for the filing of a judicial claim under Section 229 of the NIRC of 1997 was about to lapse without action on the part of the respondent, petitioner filed this petition for review on October 1, 2001.

Respondent filed his Answer on November 21, 2001 and interposed the following Special and Affirmative Defenses, to wit:

> "6. Petitioner's alleged claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 8. Petitioner's claim for issuance of tax credit certificate in the amount of P27,383,274.98 as alleged unutilized input VAT paid for the period July 1, 999 to September 30, 1999 was not fully substantiated;
>
> 9. Petitioner's right to claim for refund/tax credit has already prescribed pursuant to Section 4.106-1 of Revenue Regulations No. 7-95;
>
> 10. Petitioner failed to prove compliance with the following:
>
> a. Section 4.100-2 in relation to Section 4.102-1 and Section 4.102-2 of Rev. Reg. No. 7-95.
> b. Sections 4.104-5 and 4.104-5 (b) of Rev. Reg. No. 7-95;
>
> 11. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund; and
>
> 12. 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)" *(Answer, Records, pp. 27-30).*

THE ISSUES

Petitioner and respondent submit the following issues for resolution:

"1. Whether or not petitioner's export sales are zero-rated for VAT purposes;

2. Whether or not petitioner incurred VAT input taxes in the amount of P27,383,274.98 for the period covering from July 1, 1999 to September 30, 1999;

3. Whether or not the alleged unutilized input VAT paid by petitioner for the period covering from July 1, 1999 to September 30, 1999 are duly substantiated;

4. Whether or not petitioner has carried-over to the succeeding taxable year(s)/quarter the alleged unutilized input VAT paid for the period covering from July 1, 1999 to September 30, 1999;

5. Whether or not petitioner has complied with the requirements under Section 204(C) in relation to Section 229 of the Tax Code; and

6. Whether or not petitioner is entitled to the refund or tax credit in the sum of P27,383,274.09 as alleged unutilized input VAT paid for the period covering from July 1, 1999 to September 30, 1999" (*Joint Stipulation of Facts and Simplification of Issues, Records, pp. 63-65*).

THIS COURT'S RULING

The petition has no merit.

Petitioner anchors its claim on Sections 112(A) and (B) of the NIRC of 1997, which provide, thus:

"**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

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

As earlier stated, the subject claim of P27,383,274.98, represents the sum of petitioner's alleged input VAT payment of P9,517,565.00, on its importation of capital goods and input VAT payment of P17,865,709.98 on its domestic purchases of goods and services which are all allegedly attributable to its zero-rated sales for the period July 1, 1999 to September 30, 1999.

We shall rule first on petitioner's claimed input VAT payment on capital goods in the amount of P9,517,565.00, the tax paid on imported/locally purchased capital equipment.

Pursuant to the earlier quoted provisions of Section 112(B) of the NIRC of 1997 and jurisprudence, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove:

1) That it is a VAT registered entity;

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2) That input taxes claimed were paid on capital goods duly supported by VAT invoices and official receipts;

3) That it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

4) That the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

Records reveal that petitioner is a VAT registered entity (*Exhibit "A", Records, p. 237*). Likewise, petitioner's claimed input VAT was not applied against any output VAT liability during the third quarter of 1999 and in the succeeding quarters. The total claim of P27,383,274.98 (inclusive of the claimed input VAT on capital goods of P9,517,565.00) was already net of petitioner's output VAT liability for the third quarter of 1999 in the amount of P7,979.80 (*Exhibits "E-3 to E-5", Records, p.241).* Although petitioner carried-over the claimed input VAT of P27,383,274.98 in its VAT return for the succeeding fourth quarter of 1999 (*Exhibit "I", Records, p. 245*), the same was not utilized as petitioner's output VAT liability of P80,254.54 was offset against the current input tax credits.

Moreover, based on petitioner's Quarterly Value Added Tax Return for the fourth quarter of 1999 it deducted the claimed input VAT of P27,383,274.98 as "Any VAT Refund/TCC Claimed" from the P54,356,599.39 total available input taxes for the fourth quarter of 1999 (*Exhibit "I", items 27 and 28, Records, p, 245*). The resulting net creditable input tax of P26,893,069.86 carried-over to the succeeding first quarter of 2000 no longer included the subject claim of P27,383,274.98 (*Exhibit "K", Records, p. 247*).

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It was also established that the instant claim was filed within the two-year prescriptive period both in the administrative and judicial levels reckoned from October 25, 1999, the date when petitioner filed its 1999 third quarterly VAT return.

However, petitioner failed to comply with the equally significant second requisite mandating that input taxes claimed were paid on capital goods and duly supported by VAT invoices and official receipts. Petitioner did not submit in evidence duly machine validated Import Entry Revenue Declarations or Bureau of Customs official receipts or any other document proving actual payment of VAT on the imported goods pursuant to Section 4.104-5 of Revenue Regulations (RR) No. 7-95. Neither did petitioner submit documents proving that the subject importations qualify as capital goods pursuant to Section 4.106-1(b) of RR No. 7-95. Without these documents, petitioner's claimed input VAT payment on capital goods in the amount of P9,517,565.00 cannot be granted.

We now proceed to petitioner's remaining claimed input VAT payments of P17,865,709.98 on its domestic purchases of goods and services, which are allegedly attributable to its zero-rated sales for the third quarter of 1999.

Section 112(A) of the NIRC of 1997 as earlier quoted, allows the refund/tax credit of input VAT attributable to zero-rated or effectively zero-rated sales. Petitioner maintains that its export sales are not subject to the 10% VAT but are zero-rated pursuant to Sections 106(A)(2)(a)(1) and 108(B)(1) of the NIRC of 1997 which are all quoted herein below for easy reference:

> "**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** –
>
> "(A) *Rate and Base of Tax.*-xxx
> xxx xxx xxx

> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> "(a) *Export Sales*. – The term '*export sales*' means:
>
> "(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 the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
>
> **"SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –**
>
> "(A) *Rate and Base of Tax*. – 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:
>
> "(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Petitioner further avers that even the respondent confirmed the zero-rating of its export sales in VAT Ruling No. 102(a)(1)-402-88 (*Exhibit J*), the pertinent portion of which reads as follows:

> This refers to your letter dated May 19, 1988 stating that your company is a BOI-registered company on a pioneer status as export producer (per BOI Registration Certificate NO. 851010); that your production of manufactured integrated circuits is exported 100% to your parent company, Intel Corporation, California, U.S.A. and that the services are paid for in acceptable foreign currency.
>
> xxx xxx xxx
>
> In reply, please be informed that services rendered by VAT-registered persons in connection with the processing, manufacturing or repacking of goods for persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency inwardly remitted to the Philippines and duly accounted for under the regulations of the Central Bank of the Philippines,

shall be subject to zero rate (0%) pursuant to Section 102(a)(1) [now 108(B)(1)] of the Tax Code, as amended by E.O. 273.

To substantiate its export sales for the third quarter of 1999 and the foreign currency proceeds thereof, petitioner proffered before this Court the following documents:

Description	Exhibit No.
a.) Certificate of Inward Remittances for the year 1999 issued by Citibank, N.A. dated June 15, 2000	F
b.) Pre-marked export documents done by the Independent CPA (e.g., export sales summaries, Bank inward foreign currency credit advice, export Sales invoices, export declarations and air way bills)	P-1 to P-433
c.) Original copy of the Independent CPA report prepared by the Court commissioned CPA, Eliseo A. Aurellado	R

A perusal of the aforesaid documents reveals that petitioner's products were actually sold and shipped abroad and in consideration thereof, petitioner received foreign currency payments, which were inwardly remitted in accordance with the BSP rules and regulations. These export sales may properly fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997 instead of Section 108(B)(1) of the same Code, which deals on the sale of services. Furthermore, per its VAT Registration Certificate (*Exhibit A*), petitioner's registered business activity is sale of goods, not sale of services.

However, Section 106(A)(2)(a)(1) of the NIRC of 1997 should not be read in isolation but in conjunction with Section 113 of the same Code, which prescribes that a

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VAT registered person like petitioner, shall for every sale, issue an invoice or receipt which must contain the following information:

> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons*** —
>
> "(A) *Invoicing Requirements.* — A VAT-registered person **shall, for every sale, issue an invoice or receipt**. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> "1. A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> "2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. (*Emphasis supplied*)

Such invoice or receipt must be duly registered with the Bureau of Internal revenue as prescribed under Section 237 of the NIRC of 1997, to wit:

> **SEC. 237.** ***Issuance of Receipts or Sales or Commercial Invoices***. — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx (*Emphasis supplied*)

A scrutiny of petitioner's sales invoices shows that the same were not duly registered with the BIR as mandated under Section 237 of the NIRC of 1997. There was no authority to print or BIR permit number reflected on the said invoices. Basic is the rule that before a printer can print receipts or sales or commercial invoices an authority to print must be secured first from the BIR by all persons who are engaged in business pursuant to Section 238 of the Tax Code. Pertinent portion of Section 238 is quoted hereunder for easy reference:

> "**SEC. 238.** ***Printing of Receipts or Sales or Commercial Invoices***. — <u>All persons who are engaged in business shall secure from</u>

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> the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same. (*Emphasis supplied*)

The above provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem — the printer (***Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6170, November 24, 2003***).

Petitioner alleges that it was authorized by the BIR to issue such computerized sales invoices as evidenced by the permit to use computerized accounting records dated May 27, 1998 issued by the BIR in its favor (*Exhibit W*).

We do not agree.

The said permit was only limited to the use of pre-numbered loose leaf computerized books of accounts such as the General Ledger, Accounts Receivable Subsidiary Ledger, Purchase Register, Export Sales Register and Import Register and did not include the issuance of computerized sales invoices.

Without duly registered VAT sales invoices containing the required information particularly petitioner's TIN-VAT number and the imprinted words "zero rated", petitioner's export sales for the third quarter of 1999 in the amount of P1,032,221,636.36 cannot qualify for zero rating under Section 106(A)(2)(a)(1) of the NIRC of 1997. Consequently, petitioner's claimed input VAT payment attributable thereto in the amount of P17,865,709.98 cannot be granted.

In view of these findings, the Court finds it unnecessary to discuss the other issues raised.

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WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** and this case is hereby **DISMISSED** for lack of merit.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Chairman

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Chairman

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