REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TAKENAKA CORPORATION PHILIPPINES BRANCH,
Petitioner,

C.T.A. CASE NO. 6653

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 2 1 2006

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DECISION

ACOSTA, E., P.J.:

Before Us is a Petition for Review under Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, seeking a refund or issuance of a tax credit certificate in the amount of Fifty Two Million Two Hundred Forty Thousand Nine Hundred Twenty One Pesos and 72/100 (P52,240,921.72) allegedly representing petitioner's unutilized and unapplied input value added tax paid on purchases of goods and services attributable to its zero-rated sales for the first quarter of taxable year 2001.

Takenaka Corporation Philippine Branch ("petitioner") is a foreign corporation duly organized and existing under the laws of Republic of Japan and licensed to transact business in the Philippines. [1] It is registered as a value-added tax ("VAT") taxpayer as evidenced by its Certificate of Registration bearing Taxpayer Identification No. 005-301-571-000.

For purposes of constructing the Ninoy Aquino International Airport Passenger Terminal III ("NAIA-IPT3 Project"), petitioner entered into a subcontracting agreement with the Philippine International Air Terminals Company Incorporated ("PIATCO") denominated as "On-shore Construction Contract" for the construction of the Ninoy Aquino International Airport Passenger Terminal III ("NAIA-IPT3 Project").[2]

PIATCO is a corporation duly organized and existing under the laws of the Republic of the Philippines and duly registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone Developer/Operator evidenced by its Certificate of Registration No. EZ-98-01.[3]

On April 25, 2001, petitioner filed its 1st Quarterly VAT Return for taxable year 2001 declaring input VAT in the amount of P121,542,661.27:[4]

Zero Rated Sales/Receipts	P794,243,609.43	-
Input Tax Carried Over from Previous Quarter		P 74,315,259.31
Domestic Purchases for the Quarter	P472,273,978.46	47,227,401.96
Purchases Not Qualified for Input Tax	165,558.98	-
Total Purchases	P472,439,537.44	
Total Available Input Tax		P 121,542,661.27
Excess Input Tax		(P121,542,661.27)

On May 25, 2001, petitioner amended its 1st Quarterly VAT Return for taxable year 2001 reflecting a nil input tax carried over from previous quarter:[5]

Zero Rated Sales/Receipts	P794,243,609.43	-
Input Tax Carried Over from Previous Quarter		-
Domestic Purchases for the Quarter	P472,273,978.46	P 47,227,401.96
Purchases Not Qualified for Input Tax	165,558.98	-
Total Purchases	P472,439,537.44	

[1] Par. 1, Joint Sipulation of Facts and Issues, Rollo, p. 56
[2] Par. 4, Joint Stipulation of Facts and Issues, Rollo, p. 57
[3] Par. 5, Joint Stipulation of Facts and Issues, Rollo, p.57
[4] Exhibit C
[5] Exhibit D

Total Available Input Tax	P 47,227,401.96
Excess Input Tax	(P47,227,401.96)

On November 15, 2001, petitioner again amended its 1st Quarterly VAT Return for taxable year 2001 increasing its input VAT to P48,953,903.72, thereby increasing its excess input taxes to P48,953,903.72:[6]

Zero Rated Sales/Receipts	P794,243,609.43	-
Input Tax Carried Over from Previous Quarter		-
Domestic Purchases for the Quarter	P489,538,997.98	P 48,953,903.72
Purchases Not Qualified for Input Tax	165,558.98	-
Total Purchases	P489,704,556.96	
Total Available Input Tax		P 48,953,903.72
Excess Input Tax		(P48,953,903.72)

For the third time, on September 10, 2002, petitioner amended its 1st Quarterly VAT Return for the taxable year 2001, again increasing its input taxes to P52,240,921.72, thus, correspondingly increasing its excess input VAT as follows:[7]

Zero Rated Sales/Receipts	P794,243,609.43	-
Input Tax Carried Over from Previous Quarter		-
Domestic Purchases for the Quarter	P522,409,177.95	P 52,240,921.72
Purchases Not Qualified for Input Tax	165,558.98	-
Total Purchases	P522,574,736.93	
Total Available Input Tax		P 52,240,921.72
Excess Input Tax		(P52,240,921.72)

Through an Application for Tax Credits/Refunds and a letter filed with the Bureau of Internal Revenue District Office No. 51, Pasay City on November 5, 2002,[8] petitioner requested for the refund or issuance of a tax credit certificate in the amount of P52,240,921.72 representing its reported unutilized excess input VAT for the first quarter of 2001.

The inaction of the respondent on its claim prompted the petitioner to elevate its case before this Court on April 11, 2003.

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[6] Exhibit E
[7] Exhibit F
[8] Exhibits H & I

On June 9, 2003, respondent filed by registered mail his Answer, raising the following Special and Affirmative Defenses:

> ***"5. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;***
>
> ***6. Petitioner's claim for refund/tax credit in the amount of P52,240,921.72 representing Petitioner's alleged unutilized and unapplied input VAT for the first quarter of taxable year 2001 were not fully substantiated;***
>
> ***7. Petitioner's sale of goods and services in favor of PIATCO is not subject to VAT at zero percent rate under Section 108(B)(2) of the 1997 Tax Code;***
>
> ***8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code; as amended;***
>
> ***9. Claims for refund are construed strictly against the claimant for the same partakes of the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with the disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121);***
>
> ***10. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; and***
>
> ***11. In an action for tax refund/credit, 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/credit."***[9]

The parties mutually agreed that the sole issue to be resolved by this Court is whether or not petitioner's unutilized input tax in the amount of P52,240,921.72 incurred in the first quarter of taxable year 2001 were duly substantiated by documentary evidence to entitle the petitioner to its claim for refund or issuance of a tax credit certificate.[10]

Petitioner asserts that it is entitled to the claim for refund or issuance of a tax credit certificate of unutilized input VAT on its zero-rated sales to a PEZA registered enterprise pursuant to Sections 108(B)(3), 110(B) and 112(A) of the 1997 National Internal Revenue Code ("NIRC"),

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[9] Rollo, p. 34
[10] Joint Stipulation of Facts and Issues, Rollo, p. 59

Section 3 Of of Revenue Memorandum Circular No. 74-99[11] and Bureau of Internal Revenue VAT Committee Ruling No. 011-2003,[12] which read:

"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. –

x xx 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:

(1) x x x

(2) x x x

(3) Services rendered to persons or entities whose exemption under special law or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."

"SEC. 110. Tax Credits. –

(A) 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: x x x"

REVENUE MEMORANDUM CIRCULAR NO. 74-99

Section 3. Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise. –

xxx xxx xxx

(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 fro 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

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[11] Dated October 15, 1999

[12] Exhibit J, dated January 13, 2003

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.

VAT COMMITTEE RULING NO. 011-2003

"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. Accordingly, Takenaka is entitled to refund or the issuance of a tax credit certificate (TCC) covering all its accumulated VAT input taxes in relation to its services rendered to PIATCO and from its purchase of goods and services from duly registered VAT taxpayers, duly supported by a VAT invoice or official receipt conforming with the requirements of Section 113 and 237 of the Tax Code of 1997; provided that the application for refund or issuance of a Tax Credit Certificate (TCC) is made within two years after the close of the taxable quarter when the sales were made."

Based on the above, services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subject the supply of such services to zero percent (0%) VAT.[13] Thus, petitioner's sales of services to PIATCO are subject to zero percent (0%) VAT. Accordingly, petitioner's reported sales for the first quarter of 2001 in the amount of P794,243,609.43 which are duly supported by VAT official receipts[14] are subject to zero percent (0%) VAT. We now determine whether petitioner's unutilized input taxes in the amount of P52,240,921.72 incurred in the first quarter of taxable year 2001 was duly substantiated by documentary evidence to entitle petitioner to its claim.

Upon verification of the suppliers' invoices and official receipts submitted by petitioner,[15] the commissioned independent CPA, Mr. Richard Dy Go, found that out of the total claimed input VAT of P52,240,921.72, only the amount of P47,402,168.78 was duly substantiated and the remaining amount of P4,838,752.94 should be disallowed due to the following reasons:[16]

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[13] See also TAKENAKA CORPORATION PHILIPPINES BRANCH VS. COMMISSIONER OF INTERNAL REVENUE , CTA CASE NO. 6654, September 7, 2005
[14] Exhibits KK-600-2, KK-601-2, KK-602-2, KK-603-2, KK-604-2, KK-605-2 & KK-606-2
[15] Exhibits KK-1 to KK-461-3
[16] Exhibit K

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Item	Nature	Reference	Amount
1	Input VAT on purchases of goods not claimed in the period when the supporting VAT invoices are dated.	K-2	P2,429,821.10
2	Input VAT on purchases of goods supported by VAT invoices with stamped "TIN VAT"	K-3	2,373,679.42
3	Input VAT on purchases of services with supporting documents not in the name of the Company	K-4	12,324.84
4	Input VAT on purchases of goods supported by invoices without "BIR permit to print"	K-5	9,545.46
5	Input VAT on purchase of services supported by VAT invoices with stamped "TIN VAT"	K-6	5,090.91
6	Input VAT on purchase of goods supported by invoices printed after January 1, 1996 marked with the suppliers' "TIN V" and not "TIN VAT".	K-7	2,236.36
7	Input VAT on purchase of services supported by Non VAT ORs.	K-8	1,678.00
8	Input VAT on purchases of goods supported by VAT invoices not in the name of the Company.	K-9	1,561.74
9	Input VAT on purchases of goods without supporting documents.	K-10	1537.84
10	Input VAT on purchases of services not claimed in the same quarter when the supporting VAT ORs are dated.	K-11	750.00
11	Input VAT on purchases of goods supported by invoices with pre-printed "TIN V" and stamped "TIN VAT".	K-12	527.27
			P4,838,752.94

A careful examination of the said report and petitioner's supporting documents shows that the recommended substantiated input VAT of P47,402,168.78 shall be further reduced by the following input taxes in the amount of P1,972,636.49:

(a) Purchase of service not supported by an official receipt.

VOUCHER MARKED AS EXHIBIT	SUPPLIER	AMOUNT	INPUT VAT
KK-12	PLDT	P 253,129.80	P 23,011.80
KK-43	PLDT	177,594.12	16,144.92
KK-46A	Hankyu Int' Transport Phils	61,631.09	5,602.83
KK-50	Floro Blue Printing	2,933.34	266.67
KK-60	Kenta Japanese Restaurant	1,710.50	155.50
KK-62	Floro Blue Printing	676.00	61.45
KK-71	Kodak Express	146.00	13.27
KK-76	Floro Blue Printing	408.50	37.14
KK-77	Kameraworld, Inc.	103.50	9.41

KK-85	Floro Blue Printing	150.00	13.64
KK-88	Sea Food Wharf	20,218.78	1,838.07
KK-92	Floro Blue Printing	1,169.50	106.32
KK-158	Peking Garden	13,543.52	1,231.23
KK-181	VSL Philippines	227,362.34	20,858.93
KK-199	PLDT	294,000.85	26,727.35
KK-202	Hei Chin Rou	3,500.00	318.18
KK-205	Floro Blue Printing	50.00	4.55
KK-219	Floro Blue Printing	50.00	4.55
KK-220	Jade Garden	13,530.00	1,230.00
KK-254A	Hotel Taxicab Co.	1,080.00	98.18
KK-255	Hotel Taxicab Co.	500.00	45.45
KK-262	Floro Blue Printing	706.53	64.23
KK-407	Floro Blue Printing	220.99	20.09
KK-410	Floro Blue Printing	226.49	20.59
KK-422	Juju-tei Restaurant	2,050.00	186.36
KK-422	Juju-tei Restaurant	2,800.01	254.55
KK-424	Floro Blue Printing	568.48	51.68
KK-429	Floro Blue Printing	185.02	16.82
KK-431	Floro Blue Printing	568.59	51.69
KK-439	Pharoah	9,595.96	872.36
KK-441	Athena Disco	3,025.99	275.09
KK-442	DM Consunji	514,265.33	47,180.31
	Subtotal	P 1,607,701.23	P 146,773.21

(b) Purchase of goods not supported by an invoice

KK-40	CADD Shoppe, Inc.	P 17,500.00	P 1,590.90

EXHIBIT	SUPPLIER	REFERENCE NO	INVOICE/O.R. AMOUNT	INPUT VAT
(c) Purchase of goods supported by TAN invoice, stamped TIN-VAT				
KK-17-1 to 4	OMNICO Consortium	various	P19,392,128.23	P 1,779,094.35
(d) Purchase of goods/services not in the name of the company.				
KK 86-1	Anson Emporium	0913785	P 99.00	P 9.00
KK 200-1	Pharoah	77979	25,144.00	2,285.82
KK 201-1	Pharoah	77851	23,170.00	2,106.36
KK 203-1	Motorists House	014807	73.00	6.64
KK 207-1	South Supermarket	11473	315.15	28.65
KK 212-1	LBC Express	539236	75.00	6.82
KK 223-1	LBC Express	539239	75.00	6.82
KK 228-1	Motorists House	007987	46.00	4.18
KK 233-1	Kameraworld	6454232	480.00	43.64
KK 243-1	Pacific Internet	43835	1,881.00	171.00
KK-246-1	Motorists House	066122	137.00	12.45
KK-246-1	Motorists House	008171	73.00	6.64
KK 259-1	Motorists House	221091	500.00	45.45

KK 391-2	Pro Golf Ventures, Inc	94211	7,494.70	681.34
KK 408-2	South Supermarket	14674	314.82	28.62
KK 415-1	Pharoah	78087	20,862.49	1,896.59
KK 423	RYG Enterprises	00340	330.00	30.00
KK 433-1	Anson Emporium	0952211	2,635.05	239.55
KK 434-1	South Supermarket	16182	349.80	31.80
	Subtotal		P 84,055.01	P 7,641.37
(e)	Overstated input tax			
KK-290-30	Steel Asia Manufacturing Corp.	75437	P 358,237.01	P 32,567.01
		Shld be	212,737.00	19,339.73
			P 145,500.01	P 13,227.28
KK-290-70	Steel Asia Manufacturing Corp.	76252	P 58,345.50	P 5,304.14
			4,961.55	451.05
			P 53,383.95	P 4,853.09
KK-290-89	Steel Asia Manufacturing Corp.	76265	P 211,358.64	P 19,214.42
			163,503.68	14,863.97
			P 47,854.96	P 4,350.45
			P 246,738.92	P 22,430.82
(f)	Date with erasure			
KK 357-1	Bakahan at Manukan Eatery	19553	P 4,931.96	P 448.36
(g)	Purchase of goods without supporting document			
	Steel Asia Manufacturing		P 97,956.41	P 8,905.13
			781.94	71.09
			1,581.40	143.76
			41,626.39	3,784.22
			19,286.12	1,753.28
			P 161,232.26	P 14,657.48
	TOTAL		**P21,514,287.61**	**P1,972,636.49**

Therefore, only the claimed input VAT amounting to P45,429,532.29 (P47,402,168.78 less P1,972,636.49) was properly supported by VAT invoices/official receipts.

However, the independent CPA also noted that petitioner issued VAT Official Receipts in the amount of P401,454.61 on certain receipts which might be potentially subjected to output VAT. According to petitioner's Finance and Accounting Manager, Mr. Forcadela, these receipts merely represent refunded rental deposits, thus, it was not declared for VAT purposes. Since a VAT official receipt was issued, the commissioned CPA computed an output tax in the amount of P36,496.87.[17]

We agree with the findings of the commissioned independent CPA. Hence, the output VAT of P36,496.87 shall be deducted from the substantiated input VAT of P45,429,532.29, thereby leaving a refundable excess input VAT of P45,393,035.42 which are all attributable to zero-rated sales.

WHEREFORE, premises considered, the Petition is partially **GRANTED.** Respondent is hereby **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **Forty Five Million Three Hundred Ninety Three Thousand Thirty Five Pesos and 42/100 (P45,393,035.42),** representing unapplied or unutilized input taxes for the first quarter of taxable year 2001.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

[17] Exhibit K , CPA's Report, p.5

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