REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION -
PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5384

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
AUG 18 1998

x - x

DECISION

This case involves a judicial action for the refund or issuance of tax credit certificate in the sum of ₱97,125.91, representing overpaid input value-added tax for the year 1994.

Petitioner Nichimen Corporation - Philippine Branch (formerly, Nichimen Company, Limited), is a resident foreign corporation organized under the laws of Japan and is licensed to do business in the Philippines through a Manila branch (Exhs. A and C). It is engaged in the business of indenting, wholesaling, buying and selling of lumber, abaca, sugar, mineral ores, machinery, steel products, cement and sundry goods in the Philippines. Petitioner is also in the business of buy and sell of industrial materials, textiles, foodstuffs to include oilseed, feeds, canned goods, etc., chemicals, steel products of ferrous and non-ferrous metal products and products allied to those mentioned above (Exh. B). Pursuant to Section 107 of the Tax Code, as amended, petitioner registered itself as a value-added tax (VAT for brevity) taxpayer with Taxpayer Identification No. 000-164-832-V (Exh. D).

For the year 1994, petitioner seasonably filed its quarterly VAT Returns detailing its domestic purchases of VAT taxable goods and services as follows:

Quarter Ending	Date Filed	Amount of Purchases	VAT Paid	Exh.
03-31-94	04-20-94	₱174,416.87	₱17,441.68	E
06-30-94	07-12-94	259,835.47	25,985.54	F
09-30-94	10-20-94	263,137.60	26,313.77	G
12-31-94	01-20-95	284,756.38	28,475.55	H
T o t a l		₱982,146.32	₱98,216.54	

Except for the amount of ₱1,086.63 output tax liability for the second quarter of 1994, the rest of the returns showed a nil VAT output tax.

Petitioner alleges that its sales of services are subject to 0% rate of VAT in view of Section 100(a)(2) of the Tax Code, as amended, because its sales of services were paid for in acceptable foreign currency inwardly remitted through the Philippines and accounted for in accordance with the rules and regulations of Central Bank of the Philippines (now, Bangko Sentral ng Pilipinas).

On April 12, 1995, petitioner believing that it is entitled to the refund of input tax pursuant to Section 106(b) of the Tax Code, as amended, filed an application for tax credit/refund of input VAT attributable to its zero-rated sales of services for the year 1994 with the Bureau of Internal Revenue (Exhs. I and I-1).

The inaction of respondent on said application for refund of input VAT compelled petitioner to file the instant appeal with this Court on May 31, 1996 and to toll the running of the two-year prescriptive period expressed by the aforementioned law.

Respondent, on her part, states that petitioner's claim for refund of alleged excess input tax paid in 1994 is still under investigation; claims for refund are construed strictly against the claimant; taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; in an action for tax credit/refund the burden of proof is on the taxpayer to establish its right thereto and failure to sustain the burden is fatal to the action for tax refund.

Is petitioner entitled to the amount of ₱97,125.91, representing input VAT attributable to zero-rated sale of services for the year 1994?

The issue besetting this Court is nothing new.

In fact, in a number of cases involving the same set of facts and issues, We have decided in favor of the same petitioner, to enumerate:

CTA Case No.	Year Involved	Amount Granted	Date Decided	Entry of Judgment
4431	1988	₱ 70,507.15	03-13-95	05-03-95
5159	1992	53,129.54	11-24-97	12-17-97
5221	1993	265,541.22	01-08-98	
Total		₱389,177.91		

It is undisputed that petitioner is a VAT-registered person subject to value-added tax at 0% rate pursuant to Section 102(a)(2) of the Tax Code, as amended, to wit:

> **SEC. 102. Value-added tax on sale of services.** - (a) *Rate and base of tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services. The phrase "sale of service" means the performance of all kinds of services for others or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; goods for others, and similar services, regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: *Provided*, That the following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

> (1) xxx.
>
> (2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines. (Underlining supplied)
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> xxx xxx xxx

Petitioner submitted as evidence the Rizal Commercial Banking Corporation's credit advices to prove that its sales of services were paid for in acceptable foreign currency inwardly remitted herein in accordance with the rules and regulations of Bangko Sentral ng Pilipinas (Exhs. J to N, P to AD). Therefore, as mandated under Section 106(b) of the Tax Code, as amended, petitioner is entitled to the refund of input tax attributable to its zero-rated sales of services.

For easy reference, Section 106(b) of the Tax Code, as amended, is hereby quoted as follows:

> **SEC. 106. Refund or tax credits of input tax.** - (a) *Export Sales.* - xxx.
>
> (b) *Zero-rated or effectively zero-rated sales.*- Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.

xxx xxx xxx.

However, after a careful scrutiny of the evidence submitted by petitioner supporting the input taxes paid as well as the report of investigation conducted by Revenue Officer II, Gloria R. Morales, the Court found that some input taxes should be disallowed (Exhs. E, G-5, G-8, and H-14, H-19, H-26).

Earlier We have ruled that the prescriptive period of two years should be based on Section 106 of the Tax Code applied on a case to case basis **(Nichimen Corporation, Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 4431, *supra*).** However, We deemed it fit to reconsider the said position and rule that the prescriptive period should be counted from the date of filing of the quarterly VAT return in order to reconcile Sections 106 and 230 of the Tax Code.

As explained in Our recent resolution in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5296, dated July 20, 1998:**

> Anent the first issue, this Court, after a careful study of the arguments adduced by petitioner, reconsiders the decision with regard to the issue of prescription and consequently agrees with the interpretation of petitioner that the two-year period should be counted from the date of filing of the corresponding VAT quarterly return which is

> within twenty (20) days after the close of each taxable quarter. This will harmonize Section 106 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the cases of **Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Appeals, G.R. No. 83736, dated January 15, 1992; and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957**, that the two (2) year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore, to conclude that the two-year period should not immediately be counted from the close of the quarter but from the date of filing of the VAT return.

Basing it on the aforequoted ruling, petitioner is barred in claiming the refund of input taxes attributable to its first quarter sales of services for the year 1994.

We would like to stress that while the claim for refund with the Bureau of Internal Revenue was seasonably filed within the two (2) year period on April 12, 1995, petitioner however fell short when it sought judicial recourse from this Court on May 31, 1996. Petitioner filed its first quarter VAT return on April 20, 1994 so in reference to the date when the petition for review was filed on May 31, 1996 the input taxes paid on domestic goods and services for the first quarter of 1994 covering the period January 1, 1994 to March 31, 1994 can no longer be refunded due to prescription. This is in the total amount of ₱17,441.68 (Exh. E, Petitioner).

Further, We also disallowed the following input taxes (with the corresponding reasons for disallowance):

SUPPLIER	VAT NO.	O.R. NO.	INPUT VAT	EXH.	REMARKS
Easy Call Communications	000-586-363-NV	204365	₱ 168.00	G-5	Non-VAT receipt
Goodyear Phils. Inc.	000-409-561V	31716	1,050.96	G-8	Provisional receipt; No BIR permit to print
Workmate Phils. Inc.	32A-9-002064	7275	5,307.46	H-19	Not within the period claimed (01-27-95)
Constellation Auto Repair	000-838-193V	1895	5.00	H-14	Overstated
ESA Protective & Security Agency, Inc.	000-116-973V	19520	2,035.71	H-26	Not within the period claimed (01-27-95)
Total disallowances			₱8,567.13		

With the exception of the above disallowances, the rest of the input taxes paid by petitioner were fully substantiated by receipts.

Below is a recomputation of the allowable input tax to be refunded to petitioner:

Amount being claimed		₱97,125.91
Less:		
a. Prescribed	₱17,441.68	
b. Disallowed	8,567.13	26,008.81
AMOUNT REFUNDABLE		₱71,117.10

WHEREFORE, in view of the foregoing, the petition for review is hereby **PARTIALLY GRANTED.** Respondent is ordered to **REFUND** or in the alternative to **ISSUE** a TAX

CREDIT CERTIFICATE in favor of petitioner the sum of ₱71,117.10.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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
Court of Tax Appeals