REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KANEMATSU CORPORATION,
MANILA BRANCH (formerly
KANEMATSU-GOSHO LTD.,
Manila Branch),
Petitioner,

- versus -

C.T.A. CASE NO.4875

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 12 1997

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DECISION

Instant case refers to deficiency value-added tax (VAT) assessments issued against petitioner in the total amount of P136,937,874.10, inclusive of interests, surcharges and compromise penalties covering taxable years 1988 and 1989.

The following are the facts of the case as narrated by petitioner.

Petitioner is a resident foreign corporation organized and existing under the laws of Japan. It transacts business in the Philippines through a Branch with offices located at the 4th Floor, Don Chua Lamko Bldg., Alfaro corner Dela Costa Streets, Salcedo Village, Makati, Metro Manila. It is engaged in general indenting office, Kanematsu Corporation of Japan (formerly Kanematsu-Gosho Ltd.), and its customers in the Philippines.

In a letter, dated July 23, 1991, respondent informed petitioner that it had deficiency VAT liability for taxable years 1988 and 1989 in the amounts of P8,151,130.85 and P15,841,299.47, respectively, computed as follows:

DEFICIENCY VALUE ADDED TAX

1988-1989-

Total Sales subject to VAT ($1,849,897.14)	P39,399,422.25
VAT due thereon at 10%	P 3,939,942.23
Add: 25% surcharge	984,985.56
Sub-total	P 4,924,927.79
Add: 20% interest up to 8-20-91	3,201,203.06
Compromise	25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 8,151,130.85

1989-1990-

Total Sales subject to VAT ($3,953,759.05)	P87,262,341.85
VAT due thereon at 10%	P 8,726,234.19
Add: 25% surcharge	2,181,558.55
Sub-total	P10,907,792.74
Add: 20% interest up to 8-20-91	4,908,506.73
Compromise	25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE	P15,841,299.47

The above-mentioned assessments were based on Revenue Audit Memorandum Order (RAMO) 1-86, which the constructive trading theory that the sales of the Home

Office based on the solicitation of the Branch, are in substance sales of the branch, because the sales are constructively consummated in the Philippines. As the seller, the Branch is therefore liable for 10% VAT on the total value of goods bought by the Philippine importers directly from Japan and other countries for the subject taxable years.

In its letter, dated August 26, 1991, petitioner through its external auditors protested the aforementioned proposed assessments. It argued that RAMO 1-86 applied only to income tax, not to VAT, which is business tax. Moreover, the constructive trading theory has no bearing for purposes of the VAT, as the liability for the said tax is imposed on the Philippine importers or local purchasers of the goods and not upon subject taxpayer.

On January 7, 1992, respondent issued deficiency VAT assessments against petitioner in the total amount of P136,937,874.10, inclusive of interests, surcharges, and compromise penalties, covering taxable years 1988 and 1989, which were received by petitioner on January 14, 1992, and details of which are as follows:

Deficiency VAT-1989 (FAS-4-89-91-3649)

Deficiency VAT	P 8,726,234.19
25% Surcharge	2,181,558.55
Interest due	5,661,144.37
Compromise penalty	25,000.00
Total amount due	P16,571,437.11

Deficiency VAT-1989 (FAS-4-89-91-3650)

Deficiency VAT	P27,175,559.15
25% surcharge	20,381,669.37
Interest due	22,829,148.57
Compromise penalty	100,000.00
Total amount due	P70,387,377.89

Deficiency VAT-1988 (FAS-4-88-91-003651)

Deficiency VAT	P 3,939,942.23
25% surcharge	984,985.56
Interest due	3,541,023.07
Compromise penalty	25,000.00
Total amount due	P 8,490,950.86

Deficiency VAT-1988 (FAS-4-88-91-003652)

Deficiency VAT	P14,420,442.31
25% surcharge	7,210,221.16
Interest due	16,251,334.94
Compromise penalty	100,000.00
Total amount due	P41,488,108.99

On February 13, 1992, petitioner protested against the above-mentioned assessments on the same grounds stated in its earlier protest to the proposed assessment. This time, however, it lamented the arbitrary increase of its deficiency assessments by more than 500%. It alleged that the increase was devoid of supporting documents. Furthermore, the sales made by the Head Office cannot be considered as constructively consummated in the Philippines for the ownership or title to the goods sold passed to the Philippine buyers upon delivery thereof in Japan.

In a letter, dated September 29, 1992, which was received by petitioner on October 15, 1992, respondent denied with finality petitioner's protest. Hence, the instant petition for review filed with this Court on November 13, 1992.

The sole legal issue to be resolved in this case, is whether or not petitioner is liable for 10% VAT on the sale of goods by its Japan Head Office to Philippine customers.

In her denial letter, page 1, last paragraph thereof (Exh. "C", Pet.; p.16, CTA rec.), respondent alleged that:

> "x x x The sales consummated abroad by the Home Office shall be treated as sales constructively consummated in the Philippines and made by the branch office, hence, income therefrom shall be considered as income from sources within the Philippines. The solicitations made by the branch are actually trading acts and the home office, in pursuing its trading business here in the Philippines is obligated to supply its branch with merchandise ordered by local buyers. The sales then, that were made by the home office shall be considered no more than merely a constructive supplying of the merchandise to its branch which eventually constructively sells the same to the Philippine buyers (par. 3.1 RAMO No.1-86)"

On page 2 of the same letter/Exh. "C", Pet. (p.17, CTA rec.), respondent further stated that:

> "Under Section 100 of the Tax Code, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged shall be imposed on the seller or transferor. As clearly portrayed, Kanematsu Corporation-Manila Branch is the actual seller or transferor of the goods supplied by its head office. Such being the case, it is liable to the assessed 10% value-added tax."

The Court cannot subscribe to respondent's idea that petitioner is subject to 10% VAT. As correctly argued by petitioner, RAMO 1-86 applies only to income tax and not to VAT. Thus Section 3.1 thereof provides:

> "3.1 The Philippine branch solicits purchase orders from local buyers, relays the information to its home office, purportedly directly makes the sale.
>
> In this type of operation: (i) Sales purportedly consummated abroad by the home office shall be treated as sales constructively consummated in the Philippines and made by the branch office, hence, income therefrom shall be considered income from sources within the Philippines; (ii) the branch shall record and report the gross selling price of commodities sold thru the home office; and (iii) report for income tax purposes its net income therefrom; (iv) since under this situation, the import taxes, duties and charges have already been paid by the local buyers, the same shall not anymore be chargeable against the branch." (Underscoring supplied)

Clearly, as can be seen from sub-section (iii), RAMO 1-86 covers only income tax and not VAT. RAMO 1-86 was passed in January 1986 while VAT was passed only in January 1988, or two years later.

The years covered in the instant case are 1988 and 1989. The kind of tax involved is VAT. Therefore, the proper law that should govern is Executive Order No.273, better known as the VAT law, which was incorporated in the Tax Code of 1988, starting from Section 99 up to Section 111 thereof.

Pursuant to Section 99, the persons liable for VAT are the seller of goods or services and the importer. In the instant case, although the actual seller of goods is the Head Office in Japan, it cannot be made liable for VAT as the sale was consummated in Japan.

Neither is the Branch (the herein petitioner) liable for VAT as it is not the actual seller. This was the Court's finding in an earlier case of petitioner decided on March 27, 1995. The decision in part states:

> "x x x Petitioner as a branch merely acted as an agent of the Head Office in promoting its sales, delivering the samples and the quotation to the possible buyers. The Head Office is the actual seller (shipper) of the goods as indicated in the commercial invoices presented in evidence by petitioner. The Head Office as a trading office buys the goods from manufacturers in Japan and then sells the same to local buyers in the Philippines. x x x." (p.7, Decision in CTA Case No.4531, "Kanematsu-Gosho, Ltd.-Manila Branch vs. CIR," prom. March 27, 1995; Underscoring supplied)

In the case at bar, VAT is properly and legally due on the local buyers who are considered the importers. As earlier said, under Section 99 of the Tax Code, VAT is a liability of the seller of goods or services and the importer. Although it has been established that there was no sale subject to VAT as the said sale was consummated in Japan, there was definitely importation of goods by local purchasers who are liable for VAT. However, considering that such VAT on importation was already paid by the local buyers, it should no longer be imposed on the herein petitioner.

Finding the petition for review meritorious and in accordance with law, the Court GRANTS the same.

WHEREFORE, respondent is hereby **ORDERED to CANCEL** and **WITHDRAW** the subject deficiency VAT assessments in the total amount of P136,937,874.10, inclusive of interests, surcharges and compromise penalties covering taxable years 1988 and 1989 for lack of any legal and factual bases.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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