REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

AT & T COMMUNICATIONS SERVICES PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 6447

Members:

\- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 29 2005

x - x

DECISION

ACOSTA, E., J.:

This instant case seeks the refund or issuance of a tax credit certificate in the total amount of **TWO MILLION ONE HUNDRED FIFTEEN THOUSAND THREE HUNDRED TWENTY FIVE AND 90/100 PESOS (P2,115,325.90),** allegedly representing petitioner's unutilized and unapplied input value-added taxes (VAT) directly attributable to its zero-rated sales for the period covering January 1, 2000 to December 31, 2000.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor, BA-Lepanto Building, 8747 Paseo de Roxas, Makati City *(par 1, Joint Stipulation of Facts and Issues)*. It is registered with the Bureau of Internal Revenue as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification Number 050-004-519-384 as shown on its

301

BIR Certificate of Registration (*par 3, Joint Stipulation of Facts and Issues)*. Respondent is the duly appointed Commissioner of Internal Revenue (BIR) vested by law to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes including excess or unutilized input Value Added Tax (VAT) payments with office address at the 4th Floor, BIR National Office Building, Diliman, Quezon City (*par 2, Joint Stipulation of Facts and Issues*).

For the taxable year 2000, petitioner filed with the Bureau of Internal Revenue its Original Quarterly Value-Added Tax Return as follows:

Date Filed	Quarter Involved	Taxable Sales	Zero Rated Sales	Output VAT	Carried-over from previous Quarter	INPUT VAT Domestic Purchases	INPUT VAT Importations	Total Available Input VAT	Excess Input VAT
4/25/00	1st Qtr.	P983,054.63	P23,053,629.77	P98,305.46	P8,358,998.07	P945,562.78	-	P9,304,560.85	P(9,206,255.39)
7/23/00	2nd Qtr.	2,053,189.05	17,765,830.75	205,318.10	-	9,206,255.39	P415,467.45	9,621,722.84	(9,416,404.74)
10/24/00	3rd Qtr.	1,370,885.09	18,564,183.02	137,088.56	-	9,957,114.04	827,905.80	10,785,019.84	(10,647,931.28)
1/24/01	4th Qtr	1,929,228.05	17,384,896.13	192,922.80	-	5,674,522.88	395,234.74	6,069,757.62	(5,876,834.82)

(Exhibits "E", "H", "K" and "N")

On November 13, 2000, petitioner filed its first Amended Quarterly VAT Returns for the 1st, 2nd, and 3rd quarters for the taxable year 2000 disclosing the following:

Exh	Qtr	Taxable Sales	Zero Rated Sales	Output VAT	Carried-over from previous Quarter	INPUT VAT Domestic Purchases	INPUT VAT Importations	Total Available Input VAT	Excess Input VAT
F	1st	P983,054.63	P23,053,629.77	P98,305.67	P3,924,761.37	P 945,562.78	-	P4,870,324.15	(4,772,018.48)
I	2nd	2,053,189.05	17,765,830.75	205,318.14	-	4,772,018.48	P415,467.45	5,187,485.93	(4,982,167.79)
L	3rd	1,355,506.59	18,564,183.02	135,550.71	-	4,982,167.79	827,905.80	5,810,073.59	(5,674,522.88)

On April 6, 2001, petitioner filed its final Amended Quarterly VAT Returns for the 1st – 4th Quarters of the taxable year 2000 showing the following information:

306

Exh	Qtr	Output VAT	Carried-over from previous Quarter	INPUT VAT Domestic Purchases	INPUT VAT Importations	Total Available Input VAT	VAT Refund TCC Claimed	Excess Input VAT
G	1st	98,305.67	3,924,761.37	1,108,815.23	-	5,033,576.60	3,924,761.37	(1,010,509.56)
J	2nd	205,318.14	-	1,010,509.56	415,467.45	1,425,977.01	-	(1,220,658.87)
M	3rd	135,550.71	-	1,220,658.87	827,905.80	2,048,564.67	-	(1,913,013.96)
O	4th	192,922.80	-	1,913,013.96	395,234.74	2,308,248.70	-	**(2,115,325.90)**

On March 19, 2002, petitioner, relying on the provisions of Sections 110 (B) and 112 (A) of the National Internal Revenue Code of 1997, filed with the respondent's office an application for refund or issuance of a tax credit certificate of its alleged excess or unutilized input taxes attributable to its zero-rated sales of services for the taxable year 2000 in the amount of P2,115,325.90.

Without any favorable response from the Bureau of Internal Revenue as regards its claim, and to toll the running of the two (2) year prescriptive period within which a claim for refund may be filed as allowed by law, petitioner elevated this instant Petition for Review with this Court on April 15, 2002.

In his Answer, respondent raised the following as his Special and Affirmative Defenses, to wit:

5. Petitioner failed to show compliance with the requirements for proper substantiation under the provisions of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

6. Petitioner failed to show that the alleged input VAT was not carried over and utilized against the value-added tax liability of the petitioner in the succeeding quarters or year;

7. Petitioner has not shown proof that the services it rendered were paid for in foreign currency and inwardly remitted in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

8. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

307

9. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund; and

10. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

The following were jointly stipulated by the parties as the issues of this case, to wit:

1. Whether or not petitioner's sales of services to AT&T–US and AT&T-SI for the period January 1, 2000 to December 31, 2000 are zero-rated for VAT purposes from which it generated revenue in the amount of P76,768,539.67.

2. Whether or not petitioner's zero-rated sales for the period January 1, 2000 to December 31, 2000 were paid for in acceptable foreign currency inwardly remitted and duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP).

3. Whether or not the amount of P2,115,325.90 representing unutilized/excess input VAT paid by petitioner for the period January 1, 2000 to December 31, 2000 is attributable to its zero-rated sales.

4. Whether or not the amount of P2,115,325.90 representing unutilized/excess input VAT paid by petitioner for the period January 1, 2000 to December 31, 2000 was not utilized nor applied against its output VAT liabilities for the subsequent taxable quarters.

5. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P2,115,325.90 representing unutilized/excess input VAT paid by petitioner for the period January 1, 2000 to December 31, 2000.

Considering that the issues raised by the parties are interrelated, this Court shall then discuss them together.

Petitioner submits that for the period covering from January 1, 2000 to December 31, 2000, it generated and recorded zero-rated sales of services in the amount of P76,768,539.67 which was paid to petitioner in US dollars inwardly remitted in accordance with existing rules and regulations of the Bangko Sentral ng Pilipinas, as well as, domestic sales of taxable sales of services in the amount of P6,320,978.32 for which the equivalent amount of P632,097.32 was paid as VAT output taxes. In the course of its business and trade, petitioner also paid the amount of P2,747,423.22 as VAT input taxes on its domestic purchases of taxable goods and services totaling P27,474,232.20 for the same period. Accordingly, the VAT input taxes of P2,747,423.22 have been applied against the VAT output taxes payable of the company in the amount of P632,097.32, thus, resulting to an excess or unutilized VAT input tax of P2,115,325.90, subject of this claim. Petitioner's zero-rated sales, domestic sales of taxable services, VAT output taxes, domestic purchases of taxable goods and services and VAT input taxes for the taxable year 2000 are shown as follows:

Period Covered	Zero-Rated Sales	Domestic Sale of Services	VAT Output Taxes	Domestic Purchases of Taxable Goods and Services	VAT Input Taxes
1st Quarter	23,053,629.77	983,054.63	98,305.67	11,088,152.30	1,108,815.23
2nd Quarter	17,765,830.75	2,053,189.05	205,318.14	4,154,674.50	415,467.45
3rd Quarter	18,564,183.02	1,355,506.59	135,550.71	8,279,058.00	827,905.80
4th Quarter	17,384,896.13	1,929,228.05	192,922.80	3,952,347.40	395,234.74
TOTAL	**76,768,539.67**	**6,320,978.32**	**632,097.32**	**27,474,232.20**	**2,747,423.22**

Petitioner maintains that its sales of services to AT&T–US and AT&T-SI in the amount of P76,768,539.67, in view of their Service and Assignment Agreements entered into, are subject to VAT at zero percent (0%), pursuant to Section 108 (B)(2) of the National Internal Revenue Code of 1997. Likewise, in view of the provisions of Section 4.102-2(b)(2) of Revenue Regulations No. 7-95, or otherwise known as the Consolidated Value-Added Tax Regulations, the services rendered by a resident to a non-resident foreign client the consideration for which is paid for in acceptable foreign currency are subject to zero percent (0%) tax rate. Thus, it is entitled to a refund of its input value-added payments which are directly attributable to its zero-rated sales, pursuant to Sections 110 (B) and 112 (A) of the 1997 NIRC. Pertinent provisions of law relied upon are reproduced below for easy reference:

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

(A) xxx

(B) **Transactions Subject to Zero Percent (0%) Rate.**-

(1) Processing, manufacturing, or repacking 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 BSP;

(2) Services other than those mentioned in the preceding paragraph, the consideration for which are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;

(3) xxx

SEC. 110. Tax Credits –

(A) xxx xxx 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: *Provided, however,* That in 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 sales 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.

Revenue Regulations No. 7-95

SEC. 4.102-2. Zero-Rating. – (a) xxx

(b) Transactions Subject to zero rate. – The following services performed in the Philippines by VAT-registered person shall be subject to (0%):

(1) xxx xxx xxx

(2) Services other than processing, manufacturing, or repacking for other persons doing business outside the Philippines of goods which are subsequently exported, as well as, **services by a resident to a non-resident foreign client such as project studies, information services, engineering and architectural designs and similar services, the consideration for which are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.** *(Emphasis supplied)*

310

After a thorough examination of the records of the case, this Court rules to grant petitioner's claim.

In the case of **EG & Omni, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5987, March 26, 2004**, this Court had the occasion to enumerate the requisites essential for the entitlement of a claim for refund or issuance of a tax credit certificate of unutilized or unapplied input VAT attributable to one's zero-rated sales of goods and services, pursuant to Sections 108 (B)(2) in relation to 112 (A) of the 1997 NIRC, to wit:

1. There must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That the input taxes are attributable to such zero-rated or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and
5. The claim for refund was filed within the two-year prescriptive period.

It is not disputed that petitioner is a value-added tax (VAT) taxpayer duly registered with the Bureau of Internal Revenue. It was issued a Certificate of Registration dated November 29, 1996 by the Revenue District Office No. 50 of the Bureau of Internal Revenue with a Taxpayer's Identification Number 050-004-519-384.

Petitioner's claim that it had generated and recorded zero-rated sales of services in the amount of P76,768,539.67 has been well established (*Exhibits "G", "J", "M" and "O"*). As properly and correctly established by the Court-Commissioned Independent CPA, the summary of zero-rated sales prepared by petitioner for the four quarters of the taxable year 2000 consisted of sales of services to AT& T-US and AT&T-SI, with breakdown as follows:

Period	Amount
1st Quarter	23,053,629.77
2nd Quarter	17,765,830.75
3rd Quarter	18,564,183.02
4th Quarter	17,384,896.13
TOTAL	76,768,539.67

311

Further, petitioner had successfully shown that the input taxes claimed were attributable to its zero-rated sales of services and that the same were not applied against any output tax liabilities of petitioner, as these were already deducted from the total available input taxes as of April 17, 2002 (*Exhibits "Q", "Q-1" and "Q-2"*).

Moreover, petitioner's administrative claim for refund or the issuance of a tax credit certificate filed on March 19, 2002 was well within the two-year prescriptive period allowed by law within which to file the same. In this instant case, petitioner had the following periods within which to seasonably file its claim for refund or the issuance of a tax credit certificate, based on its actual filing of the original Quarterly Vat Returns for the taxable year 2000 *(Exhibits "E", "H", "K" and "N")*, to wit:

Period	Date Filed Return	Last Day for Filing Claim
01/01/00 - 03/31/00	April 25, 2000	**April 25, 2002**
04/01/00 - -6/30/00	July 23, 2000	July 23, 2002
07/01/00 - 09/30/00	October 24, 2000	October 24, 2002
10/01/00 - 12/31/00	January 24, 2001	January 24, 2003

Based on the aforementioned, petitioner had until April 25, 2002, which is the latest date petitioner may be able to claim the subject refund for the first quarter of the year 2000, within which to file both its administrative and judicial claims for refund or issuance of a tax credit certificate for the four quarters of the taxable year 2000. Considering that petitioner filed its administrative claim on March 19, 2002 and its judicial claim with this Court on April 15, 2002, the same were seasonably filed.

Additionally, petitioner was able to prove that the foreign currency exchange proceeds in United States dollars representing the inward remittances from AT&T–US and AT&T–SI for the management services rendered by petitioner were credited to its Citibank Account Number 0/601563/029, as evidenced by various Citibank official computer generated advices (*Exhibits "U" to "EEE"*).

Having resolved that petitioner is entitled to its claim for refund or issuance of a tax credit certificate for the unutilized input taxes for the taxable year 2000, it is now necessary to evaluate the accurateness of the claimed unapplied/excess input taxes in the amount of

P2,115,325.90.

Basic is the rule that before any claim for unapplied or excess input taxes is allowed, the same must be supported by valid VAT invoices and official receipts *(Nichimen Corporation [Manila Branch] vs. The Commissioner of Internal Revenue, CTA Case No. 6016, February 17, 2003*). After a painstaking evaluation and verification of the various invoices and official receipts offered in evidence, this Court agrees with the findings of the Independent CPA in excepting the amount of P38,714.90 (*Exhibits "RRRRR-3" to "RRRRR-4"*) from the total input taxes claimed by petitioner, due to the following reasons:

EXCEPTION	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Taxes Claimed on Purchases of Services Supported by VAT Official Receipts (ORs) with "TIN" only	P 141.82	P 58.18	P 302.26	P 4,708.18	P 5,210.44
Input Taxes Claimed on Purchases of Services Supported by an OR without "TIN-VAT"	-	-	1,618.18	-	1,618.18
Erroneous Computation of Input Tax Claimed on Purchase of Services	-	160.77	-	-	160.77
Input Taxes Claimed on Purchases of Services Supported by Documents Other than VAT ORs (i.e., VAT invoice, non-VAT ORs)	-	-	-	2,727.27	2,727.27
Input Taxes Claimed on Purchases of Goods Supported by Documents Other than VAT Invoices (i.e.,	-	-	-	9,980.00	9,980.00

313

EXCEPTION	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
VAT ORs)					
Input Taxes Claimed on Purchases of Services Supported by a VAT OR Not Issued in the Name of the Company	-	-	-	1,272.09	1,272.09
Overseas Communication Tax (OCT) Claimed as Input Tax Credits	15,723.70	-	-	-	15,723.70
Input Taxes Claimed on Purchases of Services Supported by VAT ORs Dated January 2001 which were also claimed in 2001	-	-	-	2,022.45	2,022.45
TOTAL	**15,865.52**	**218.95**	**1,920.44**	**20,709.99**	**38,714.90**

Clearly then, the amount of P38,714.90, should be disallowed for the reasons that, although there were available invoices supporting the said amounts, there were either certain discrepancies on the face of invoices which would nonetheless render these invoices invalid for the purpose of claiming this instant refund, or that some were already claimed in the year 2001.

Moreover, this Court finds that the amount of P169,337.41, which was not excepted by the Independent CPA in its Report as submitted to this Court, should likewise disallowed for the following reasons:

EXCEPTION	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Taxes on Purchases of Services Supported by VAT ORs with no year	P 42.00[1]	-	-	P1,530.00[2]	P 1,572.00

[1] Exhibit TTTTT-29
[2] Exhibit WWWWW-236

814

EXCEPTION	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
in date					
Input Taxes on Purchases of Services Supported by ORs with no "TIN-VAT"	-	-	-	3,517.05[3]	3,517.05
Input Taxes with No Supporting Documents	163,252.45[4]	995.91[5]	-	-	164,248.36
TOTAL	P163,294.45	995.91	-	P5,047.05	P169,337.41

Therefore, based on the foregoing excepted amounts, petitioner's total substantiated input taxes is thus reduced to the amount P2,539,370.91, from the asserted P2,747,423.22, recomputed as follows:

Total Input VAT per 2000 Quarterly VAT Return		P2,747,423.22
Less: Disallowances		
Per Independent CPA	P 38,714.90	
Per Court's Verification	169,337.41	208,052.31
TOTAL SUBSTANTIATED INPUT VAT FOR 2000		**P2,539,370.91**

In view of the foregoing, petitioner is not entitled to claim the full amount of P2,115,325.90 considering that its total substantiated input VAT for the taxable year 2000 only amounts to P2,539,370.91 and not to P2,747,423.22. Consequently, petitioner is only entitled to the remaining validly supported input taxes in the amount of P1,907,273.59, which is net of petitioner's 2000 output value-added tax liabilities of P632,097.32, to wit:

TOTAL SUBSTANTIATED INPUT VAT FOR 2000 (As per Court's Findings)	**P2,539,370.91**
Less: Output VAT per 2000 Quarterly VAT Return	632,097.32
TOTAL REFUNDABLE AMOUNT	**P1,907,273.59**

---

[3] Exhibit WWWWW-224

[4] Difference is computed as follows:

Input VAT Claimed for 1st Quarter per Return	P1,108,815.23
First Quarter Input VAT per Summary List (Exh. SSSS-2 to 5) & Supporting Ors/Invoices	945,562.78
Difference	P 163,252.45

[5] Suppliers: Gaza General Merchandize & Delco Telecoms

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND**, or in the alternative **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner, the total amount of **ONE MILLION NINE HUNDRED SEVEN THOUSAND TWO HUNDRED SEVENTY THREE AND 59/100 PESOS (P1,907,273.59)** representing petitioner's unapplied or unutilized input value-added taxes for the four quarters of the taxable year 2000.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice

316