REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JIDECO MANUFACTURING PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6552

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 16 2004

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P11,926,474.76 allegedly representing unutilized input value-added tax paid on purchases of capital goods for the third and fourth quarters of 2000 and second quarter of 2001.

Petitioner is a corporation organized and existing under Philippine laws under Securities and Exchange Commission Registration No. A199914483 and engaged in the business of manufacturing and exporting various automobile and motor parts *(par. 2, Joint Stipulation of Facts)*.

Petitioner is a value-added tax (VAT) registered taxpayer under Bureau of Internal Revenue Certificate of Registration OCN 99-590-000844-0. It is likewise duly registered with the Philippine Economic Zone Authority under Certificate of Registration No. 99-081 dated December 23, 1999 *(pars. 1 & 3, Joint Stipulation of Facts)*.

On April 7, 2000, petitioner entered into a contract with Western Philippine Corporation (hereinafter referred to as "WPC") whereby the latter will act as the general contractor for the construction of petitioner's factory plant located at Lima Technology Center, Special Economic Zone, Lipa City (*Exhibit D*).

Under the contract, WPC will furnish all labor, materials, equipment and supplies and perform all the operations necessary for the construction design and completion of the factory plant for the contract price of P222,047,148.01 inclusive of VAT (*Exhibit D-1*), broken down as follows (*Exhibit D-3*):

Item No.	Description	Unit	Quantity	Amount (Php)
1	Temporary Works	ls	1	P 3,525,798.00
2	Building			
2.1	Plant Building	ls	1	74,887,565.00
2.2	Office Building	ls	1	20,242,450.64
2.3	Canteen Building	ls	1	7,460,245.00
2.4	Powerhouse Building	ls	1	3,421,260.00
2.5	Guardhouse Building	ls	1	484,678.00
2.6	Water Tank	ls	1	294,608.00
3	Site Development	ls	1	11,309,162.00
4	Electrical Works	ls	1	14,557,553.00
5	Mechanical Works	ls	1	10,487,823.00
6	Production	ls	1	30,965,485.00
7	Hoist	ls	1	1,045,385.00
8	Site Expenses	ls	1	9,427,470.00
9	Design Fee	ls	1	3,763,385.00
10	Building Permit	ls	1	1,149,923.00
11	Overhead	ls	1	8,838,253.00
	Sub-total			**P 201,861,043.65**
	VAT (Peso Portion)	ls	1	20,186,104.36
	GRAND TOTAL			**P 222,047,148.01**

For the third and fourth quarters of 2000 and second quarter of 2001, petitioner allegedly made contract payments to WPC inclusive of 10% VAT and net of 1% withholding tax.

Believing that the contract payments it made to WPC qualify as capital goods purchases, petitioner filed an administrative claim for refund of the alleged unutilized input VAT payments

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corresponding thereto in the sum of P11,926,474.76 on October 23, 2002 (*Exhibits Q & Q-1; par. 5, Joint Stipulation of Facts*). Petitioner cited as legal basis Section 112(B) of the National Internal Revenue Code (NIRC) of 1997 in relation to Section 4.106-1 of Revenue Regulations No. 7-95.

As the two-year prescriptive period for the filing of a judicial claim was about to lapse, petitioner elevated its case before this court on the very next day, October 24, 2002.

Respondent, in his Answer to the Petition for Review, raised the following Special and Affirmative Defenses:

> 5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent;
>
> 6. To support its claim, it is imperative for petitioner to prove the following, viz:
>
> a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;
>
> c. Compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law;
>
> d. That the input taxes of P11,926,474.76 allegedly paid by the petitioner on its purchases of capital goods were attributable to its

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zero-rated sales and such have not been applied against any output tax;

e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the purchase was made in accordance with Section 112 (B) of the Tax Code, as amended;

f. That petitioner's domestic purchases of capital goods were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations No. 7-95. (Re: Persons who can avail of the Input Tax Credits);

h. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found Sections 112 (B) and 229 of the Tax Code, as amended.

7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co.[P.I.] v. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670); and

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, did not present any evidence and instead submitted his case for decision based on the pleadings (*page 208, CTA Records*).

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After both parties have filed their respective memorandum, the case was submitted for decision on June 9, 2004.

As jointly stipulated by the parties, the issues to be resolved by this court are:

1. Whether or not petitioner filed its administrative and judicial claims for tax credit and/or refund in the amount of P11,926,474.76 within the statutory period of two years as required under Sections 112(B), 204(C) and 229 of the Tax Code, as amended;

2. Whether or not petitioner has paid input VAT on capital goods purchased;

3. Whether or not the input taxes allegedly paid by the petitioner on its purchases of capital goods were attributable to its zero-rated sales and/or used in VAT taxable business and such have not been applied against any output tax;

4. Whether or not the invoicing and accounting requirements for VAT-registered person, as well as the filing and payment of VAT has been complied with by the petitioner;

5. Whether or not the construction of Petitioner's factory plant in Lipa City is considered as a purchase of capital goods as defined under Section 4.106-1 of Revenue Regulations No. 7-95; and

6. Whether or not the checklist of requirements as prescribed in Revenue Memorandum Order No. 53-98 in connection with the administrative claim for refund has been complied with by the petitioner.

Anent the issue on prescription, petitioner maintained that the instant claim for refund/tax credit was timely filed within the two-year prescriptive period both in the administrative level on October 23, 2002 and before this court on October 24, 2002, counted from October 25, 2000, January 25, 2001 and July 25, 2001, the respective dates when petitioner filed its VAT returns for the third and fourth quarters of 2000 and second quarter of 2001.

Respondent, on the other hand, contended that the two-year prescriptive period should be reckoned from the close of the taxable quarter when the purchases were made. Respondent explained that since the third quarter of 2000 ended on September 30, 2000, it is from this point that the two-year period started to run. Thus, out of the total claim of P11,926,474.76, the

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amount of P8,977,874.47 with invoices pertaining to the third quarter of 2000 had already prescribed and only the remaining claim of P2,948,600.29 fell within the two-year prescriptive period.

We concur with the petitioner.

As we have already elucidated in our ***Resolution*** dated ***July 20, 1998*** in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296***, the two-year prescriptive period for the filing of claims for VAT refund should be reckoned from the date of filing of the corresponding quarterly VAT returns in order to harmonize the provisions of Section 112(B) of the NIRC of 1997 with Sections 114(A) and 229 of the same Code, *viz*:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** —
>
> "(A) xxx xxx xxx
>
> "(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.
>
> "(C) xxx xxx xxx
>
> "(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> "In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.-
>
> "**SEC. 114.** ***Return and Payment of Value-added Tax.*** —
>
> "(A) *In General.* — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: x x x

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> "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected***. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> "In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

In the cases of ***Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals, GR. No. 83736***, dated ***January 15, 1992*** and ***ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957***, the Supreme Court held 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 the 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 matters can only be determined if a return is filed. It is logical therefore, that the two-year period should not immediately be counted from the close of the quarter but from the prescribed date of filing of the VAT return.

The earliest quarter covered by the instant claim is the third quarter of 2000 for which petitioner originally filed its quarterly VAT return on October 25, 2000 (*Exhibit E*). Counting from this date, petitioner had until October 25, 2002 within which to file its claim for refund/tax credit both in the administrative and judicial levels. Hence, the administrative claim filed on

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October 23, 2002 as well as the Petition for Review filed on October 24, 2002 fell within the two-year prescriptive period.

Regarding the issue of whether or not the construction of petitioner's factory plant in Lipa City is considered as a purchase of capital goods, we answer in the affirmative.

As defined under Section 4.106-1(b) of Revenue Regulations No. 7-95, "*Capital goods or properties*" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.

Undoubtedly, petitioner's factory plant falls squarely under the foregoing definition of capital goods because: 1) it has an estimated useful life of more than one year; 2) it is to be used by petitioner in its manufacture and export of automobile and motor parts; and 3) it is subject to depreciation under Section 34(F) of the NIRC of 1997.

Likewise, it has been held that the cost of services is within the meaning and term of "capital goods" if it is a capital expenditure and thus, forms part of the cost of the capital asset. In the instant case, the cost of the construction services rendered by WPC is definitely a capital expenditure that should form part of the cost of petitioner's factory plant [***Hopewell Power (Philippines) Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5389, January 4, 1999 [affirmed by the Court of Appeals in the case of Commissioner of Internal Revenue vs. Hopewell Power (Phils.) Corp., CA-G.R. SP. No. 51617, March 17, 2000]***.

As to whether or not the input taxes allegedly paid by the petitioner on its purchases of capital goods were attributable to its zero-rated sales and/or used in VAT taxable business, petitioner manifested that its case is for the refund/issuance of a tax credit certificate for unutilized input VAT incurred from purchases of capital goods for the construction of its factory plant, and not for the purchase of goods and services attributable to its zero-rated sales.

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Respondent, in his memorandum, argued that in the case of ***Commissioner vs. Cebu Toyo Corp., CA G.R. SP No. 60304 dated July 6, 2001***, it was explained that there are two sets of fiscal incentives available to a PEZA registered enterprise, namely: 1) incentives under Presidential Decree No. 66, as amended, and Section 24 of Republic Act No. 7916, which includes the *5% preferential tax rate on gross income earned in lieu of national and local taxes*; and 2) incentives under Book VI of Executive Order (EO) No. 226, as amended, which includes *income tax holiday for 4 to 6 years*, depending on whether the enterprise is registered as pioneer or non-pioneer. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise opted for the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax.

On the sole basis that there is no indication in petitioner's VAT return for the third quarter of 2000 particularly in column 12 thereof (*Exhibit E*) that it is availing of tax relief under special law, respondent presumed that petitioner availed of the first option, that is, the 5% preferential tax rate. Accordingly, respondent alleged that inasmuch as petitioner is paying the 5% preferential tax in lieu of all other taxes, it is exempt from VAT and cannot claim TCC or refund for the VAT paid on its purchases.

We do not agree with the respondent.

The mere non-indication in the VAT return of an availment of a tax relief under special law is not sufficient proof that petitioner is availing of the 5% preferential tax rate and not the income tax holiday. However, there is no evidence on record that will prove that petitioner availed of the income tax holiday. In fact, there was no such allegation in the petition for review nor in its memorandum as petitioner is claiming for a refund/tax credit based on the provision of

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Section 112(B) of the 1997 Tax Code in relation to Section 4.106-1 and Section 4.104-5 of Revenue Regulations No. 7-95.

But it is undisputed that petitioner is a VAT registered entity. As such, it is subject to VAT and the alleged input VAT payments on capital goods purchased cannot but be attributable to its VAT taxable business of manufacturing and exporting of automobile and motor parts.

As regards the issue of whether or not the claimed input VAT was applied against any output tax, the answer is in the negative. As can be seen in its amended VAT returns for the third and fourth quarters of 2000 and second quarter of 2001 (*Exhibits E-1, F-1 & H-1*), petitioner had no output VAT against which the claimed input VAT may be applied or credited. Moreover, in its amended VAT return for the third quarter of 2001 (*Exhibit R-1*), the claimed input taxes were deducted under "Any VAT Refund/TCC Claimed" in order that the same will no longer be carried over to the succeeding fourth quarter of 2001.

With reference to the second and fourth issues, the various invoices and official receipts from WPC (*Exhibits J to P, inclusive of sub-markings*) show that for the subject period of claim, petitioner was billed by and made payments to WPC for the construction services rendered by the latter.

Under Section 108(A) of the NIRC of 1997, such payments received by WPC from petitioner constitute WPC's taxable *gross receipts* which is defined as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax". Accordingly, under Section 108(C) of the same Code, the 10% VAT is computed by multiplying the total amount indicated in the *official receipt* by 1/11.

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Considering that the output VAT of WPC on the subject transactions becomes the input VAT of petitioner, Section 110(A)(2) of the NIRC of 1997 requires that the claimed input VAT be substantiated by VAT official receipts, thus:

> "SEC. 110. *Tax Credits.* –
>
> "(A) *Creditable Input Tax.* –
> "(1) **Any input tax evidenced by** a VAT invoice **or official receipt** issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax**:
> xxx xxx xxx
> "(b) **Purchase of services on which a value-added tax has been actually paid**.
> "(2) The input tax on domestic purchases of goods or properties shall be creditable:
>
> "(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> xxx xxx xxx
>
> "However, **in the case of purchase of services**, lease or use of properties, **the input tax shall be creditable to the purchaser**, lessee or licensee **upon payment of the compensation**, rental, royalty **or fee**." (Emphasis supplied).

It must be pointed out that at first glance it appears that the word "or" in Section 110(A)(1) indicates an alternative. However, a further reading of the above Section 110(A)(1)(b) and Section 110(A)(2)(a) reveals otherwise. The input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser *upon consummation of sale*, which means upon issuance by the seller of the VAT invoice evidencing the sale of goods or properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser *only upon payment of the compensation or fee*, *i.e.*, **upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.**

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The above provisions are in harmony with the provisions of Section 106(A) & (D) as well as Section 108(A) & (C) of the 1997 Tax Code, which provide for the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively.

For the sale of goods or properties, the 10% VAT is imposed upon the gross selling price. In other words, the VAT on the sale of goods or properties accrues upon the consummation of sale regardless of whether or not the consideration therefor was actually received. It is for this reason the Section 106(D) provides that the tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).

In the case of sale of services, as in the case at bar, the 10% VAT is computed based on gross receipts under Section 108(a) earlier defined. Therefore, the VAT on the sale of services accrues *upon actual or constructive receipt of the consideration* irrespective of whether or not the service has been rendered. And Section 108(C) prescribes that the tax on the sale of services shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

But in order to be considered as valid VAT official receipts, the same must contain all the information required under Section 113 of the NIRC of 1997, to wit:

> "**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).

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A scrutiny of the official receipts (*Exhibits J-1, K-1, L-1, M-1, N-1, O-1 & P-1*) supporting petitioner's claimed input VAT discloses that the same failed to comply with the invoicing requirements under Section 113 of the NIRC of 1997. The said official receipts do not contain the required taxpayer's identification number (TIN) followed by the word "VAT" but the old taxpayer's account number (TAN). Consequently, the said official receipts cannot be considered as valid VAT official receipts and the payments indicated therein should not give rise to any input tax.

While petitioner submitted the sales invoices issued by WPC which contained all the necessary information required under the aforequoted provisions of law, the same shall not be considered as valid proof of the claimed input VAT. As we have earlier emphasized, the subject transactions pertain to purchases of services, which under Section 110(A)(1) and (2) in relation to Section 108(C) of the NIRC of 1997 must be substantiated by VAT official receipts. The presentation of the VAT official receipts presupposes that the claimed input VAT was actually remitted to the Bureau of Internal Revenue.

Moreover, this court noted that the official receipts bear BIR Permit Number dated April 11, 1991. Inasmuch as the Transitory Provisions of Revenue Regulations No. 7-95 allowed the use of unused invoices/official receipts by taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT only up to June 30, 1996 subject to the compliance of certain requirements, with more reason that the official receipts in question cannot be considered as valid proof of the claimed input VAT.

As to the sixth issue, respondent, in his memorandum alleged that petitioner failed to prove its compliance through the submission of the documentary requirements, as prescribed in Revenue Memorandum Order No. 53-98 in connection with the filing of administrative claim for refund. Respondent further alleged that since the judicial claim for refund was filed only a day after the filing of the administrative claim for refund, said administrative claim for refund is but a mere pro-forma and the court cannot take cognizance of the instant case.

We disagree.

First, it is well-settled that when the two-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, he should file a petition for review with the Court of Tax Appeals within the said two-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period he can no longer appeal the same to the Court of Tax Appeals [***Commissioner of Internal Revenue vs. Hitachi Computed Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002 citing Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil 232, Johnson Lumber Co. vs. CTA, 101 Phil 151***].

Second, let it be stressed that Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998, entitled "*Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket*" refers mainly to the requirements for refund/tax credit in the administrative level when the taxpayer is required to submit for audit all his/its pertinent documents/records for the purpose of establishing the veracity of his/its claim for refund/credit. However, in the judicial level, *i.e.*, when the case is elevated to this court, we are governed by our own Rules of Court on the matter of proving a case. Moreover, we have already laid down in previous similar cases, the more recent of which is the case of ***Rohm Apollo Semiconductor Philippines, Inc. vs. Honorable Commissioner of Internal Revenue, CTA Case No. 6534, May 27, 2004,*** the requisites which a taxpayer must comply, in claiming for a refund/tax credit of unutilized input VAT payments on capital goods purchased pursuant to

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Section 112(B) of the NIRC of 1997 in relation to Section 4.104-5 of Revenue Regulations No. 7-95, as follows:

1.) that it is a VAT registered entity;
2.) that it paid input VAT on capital goods purchased;
3.) that its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts;
4.) that it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
5.) that the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

As earlier noted, petitioner met all of the above requirements except for the second and third requisites. Petitioner unsuccessfully proved that it made input VAT payments on capital goods purchases as it failed to present proper VAT official receipts. As a result thereof, petitioner's claim must fail.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby DENIED for lack of merit.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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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 Justice