REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BOBBIN CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 5585**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 08 2000

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DECISION

This case involves a judicial claim for refund/tax credit in the amount of P1,588,515.92 representing unutilized input value-added taxes allegedly paid by the Petitioner in its local purchases of goods and services for the period January 1, 1996 to February 28, 1997.

Petitioner is a domestic corporation which manufactures and sells tobacco wrapper and bobbin (TSN, Nov. 11, 1998, p. 6). It is registered with the Bureau of Internal Revenue (BIR) as a valued-added tax (VAT) taxpayer (Exh. A). Petitioner is also duly registered with the Export Processing Zone Authority (EPZA) as an export enterprise (Exh. B) and later with the Philippine Economic Zone Authority (PEZA) when the latter took over the management of the former (Exh. EE).

For the period January 1, 1996 to March 31, 1996, Petitioner filed its First Quarterly VAT Return with the BIR (Exh. E).

For the second, third and fourth quarters of 1996, Petitioner also filed the respective quarterly VAT returns (Exhs. I, M & Q).

On February 25, 1997, Petitioner filed its monthly VAT return for January (Exh. T). For the month of February, 1997, petitioner filed its monthly VAT return on March 25, 1997 (Exh. U).

On March 26, 1998, Petitioner amended all the abovementioned returns (Exhs. F, J, N, R, T & V, respectively) allegedly to reflect the correct amounts previously reported and/or paid.

Petitioner declared an aggregate amount of zero-rated export sales of P43,125,658.64 for 1996 and total input tax payments in the sum of P1,588,515.92 for the period January 1, 1996 to February 28, 1997, detailed as follows:

				Input VAT	
1995	Exh.	Zero-rated Sales	Carried over From previous quarter	On purchases this quarter	Carried over to subsequent Quarter
1st qtr	F	P 6,477,157.77	P ---	P 428,410.23	P 428,410.23
2nd qtr	J	6,539,887.14	428,410.23	407,391.96	835,802.19
3rd qtr	N	9,652,352.46	835,802.19	300,760.86	1,136,563.05
4th qtr	R	20,456,261.27	1,136,563.05	269,982.32	1,406,545.37
Total		P 43,125,658.64		P 1,406,545.37	
1997					
Jan.	T		P 1,406,545.37	P 157,802.44	P 1,564,347.81
Feb.	V	---	1,564,347.81	24,168.1	1,588,515.92
Subtotal		---		P 181,970.55	
Total		P 43,125,658.64		P 1,588,515.92	

Petitioner asserts that the total input VAT of P1,588,515.92 remained unutilized inasmuch as its sales were purely export sales and were zero rated. In other words, it had no output tax liability within which to offset or deduct the said input VAT (TSN, June 24, 1998, p. 13).

Consequently, Petitioner filed on October 28, 1997 with the One-Stop-Shop Inter-Agency and Duty-Drawback Center of the Department of Finance a claim for refund of said input taxes allegedly paid for the period involved in this case (Exhs. X to BB, inclusive). Although it is noted that Petitioner failed to present the original copies of the Application for Tax Credit/Refund for Value-Added Tax Paid (BIR Form 2552) (Exh. X) and the Claimant Information Sheet (Exh. Y) for comparison with the marked exhibits, Petitioner nevertheless proved the fact of actual filing of the claim by means of the claim stub (Exh. Z) and official receipts issued by the Department of Finance dated October 28, 1997 (Exh. AA) and November 14, 1997 (Exh. BB) for the payment of filing fees and processing fees, respectively. Further, Respondent confirmed this in his memorandum.

Considering that the two-year prescriptive period was about to expire and Petitioner's claim remained unresolved, the instant petition was filed on March 27, 1998.

Respondent, in his Special and Affirmative Defenses, alleges, that:

> 1) Assuming but not admitting that Petitioner filed an application for tax credit/refund of unapplied input value-added tax, the same is subject to administrative investigation and resolution;
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> 2) Taxes are presumed to have been collected in accordance with law. Hence, the Petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;
>
> 3) Petitioner must show that it has complied with the provisions of Section 106 of the Tax Code, as implemented by Section 16 of Revenue Regulations No. 5-87, as amended; and
>
> 4) Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation.

Petitioner presented witnesses and voluminous documents to support its case. Respondent, on the other hand, waived his right to present any evidence (CTA rec., p. 88). But in his memorandum, Respondent argues that since Petitioner's claim for refund is under investigation, the instant petition is premature and the Court of Tax Appeals has no jurisdiction to resolve the petition.

Section 230 and Section 106 of the 1977 Tax Code, as amended by Republic Act No. 7716, and implemented by Sec.4.106-2 of BIR Revenue Regulations No. 7-95 require that claims for input VAT must be filed within two years after the close of the taxable quarter when the sales were made. It is so provided that the aggrieved taxpayer may appeal the decision or unacted claim with the Court of Tax Appeals. Clearly therefore, it is the Tax Code itself which confers the Court of Tax Appeals jurisdiction to resolve an unacted claim. Considering that the last day for the filing of the first quarterly VAT return was on April 20, 1996, Petitioner filed this petition for review on March 27, 1998. It is illogical and impractical on the part of the Respondent to require Petitioner to wait for the resolution of the said claim even if the same or a part thereof is about to lapse.

The filing with the One Stop Shop Center of the Department of Finance is countenanced by the Bureau itself under Section 4.106-2 of Revenue Regulations No. 7-95 which provides that:

> **SEC. 4.106-2. Procedures for claiming refunds or tax credits of input tax-(a) Where to file the claim for refund or tax credit. -** Claims for refunds or tax credit shall be filed with the appropriate Revenue District Office (RDO) having jurisdiction over the principal place of business of the taxpayer. <u>However, direct exporters may also file their claim for tax credit with the One Stop Shop Center of the Department of Finance</u>. (Emphasis Supplied.)

Furthermore, the Supreme Court held in **Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. (22 SCRA 12),** thus:

> The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two year period. If, however, the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding

> must be started in the Court of Tax Appeals before the end of the two year period without awaiting the decision of said Collector.

Having determined that this Court has jurisdiction to resolve the instant petition, We now go to the main issues submitted for Our consideration, namely:

(a) Whether or not Petitioner is entitled to the tax refund/credit of P1,588,515.92 allegedly representing input VAT payments for local purchases of goods and services for the period January 1, 1996 to February 28, 1997; and

(b) Whether or not Petitioner has fully substantiated its claim.

After a careful review of the facts, arguments, evidence, laws and jurisprudence in point, We rule against the Petitioner.

The legal bases for Petitioner's claim are Section 100(a)(2)(A) and Section 106(a) of the Tax Code, as amended, to wit:

> (2) The following sales by VAT-registered persons shall be subject to 0%:
>
> (A) *Export sales*.- The term "export sales" means:
>
> (i) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).
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> SEC. 106. *Refunds or tax credits of creditable input tax*. - 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 the case of zero-rated sales under Section 100(a)(2)(A)(i),(ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the *Bangko Sentral ng Pilipinas* (BSP).

Relative thereto, Sections 4.106-1(a) and 4.106-2(c) of BIR Revenue Regulations No. 7-95 provide, *viz*:

> **Refunds or tax credits of input tax. -** (a) **Zero-rated sales of goods and properties or services.** - Only a VAT-registered person may be given a tax credit certificate or refund of VAT paid corresponding to the zero-rated sales of goods, properties or services, excluding the presumptive input tax and to the extent that such input tax has not been applied against the output tax. The application should be made within two (2) years after the close of the taxable quarter when the sales were made.
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> (c) **Period within which to refund or tax credit of input taxes shall be made. -** In proper cases, the Commissioner shall grant a tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with subparagraphs (a) and (b) above.
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> In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue after the sixty (60) day period from the date of submission of the application but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals.

Thus, under the law, it appears that as a VAT and EPZA exporter registered taxpayer, Petitioner's export sales are subject to zero percent VAT. And considering that the input taxes it paid from January 1, 1996 to February 28, 1997 remained unutilized, seemingly, Petitioner is entitled to a refund or issuance of a tax credit certificate. Moreover, as earlier discussed, the claim was filed within the period required by law.

However, Petitioner failed to fully substantiate its claim for refund. As can be culled from the records in this case, Petitioner failed to satisfactorily prove that indeed its sales were zero-rated. Revenue Regulations No. 3-88 requires in export sales the submission of the following documents in addition to the application for tax credit/refund filed:

> i) photocopy of export document showing the amount of export document, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.
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> ii) statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

To prove the zero-rating of its sales, Petitioner presented the following evidence:

a) VAT, EPZA & PEZA registration certificates (Echoes A, BB & EE);

b) testimonies of Ms. Daisy delay Rica, (TSN, Nov. 11, 1998 & Jan. 27, 1999) and Ms. Leoner Rivera-Dalisay (TSN, Feb. 22, 1999);

c) export sales invoices (Exhs. OT-10001 to OT-11266, inclusive);

d) Solidbank credit advices (Exhs. FF-1 to FF-5, inclusive and BPI credit memos (Exhs. FF-6 to FF-14, LL to NN, inclusive); and

e) CPA certification (Exhs. OO & PP).

But herein Petitioner failed to submit export documents such as airway bills, bills of lading, export declarations/permits to prove actual shipment/exportation of its products. Section 102(a)(2)(A) of the Code provides that zero rated export sales means the sale and actual shipment of goods from the Philippines to a foreign country. Without these documents the fact of sale and actual shipment cannot be fairly established. More importantly, Petitioner failed to prove that the foreign remittances indicated in its bank credit memos correspond to its export sales for the period involved in this case.

Petitioner should have properly identified for which export sales invoices the foreign remittances pertained to.

Settled is the rule that tax refunds, being in the nature of tax exemptions, are to be strictly construed against the taxpayer (**Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd.**, 244 SCRA 332).

WHEREFORE, in view of all the foregoing, the petition for review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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