67

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HITACHI COMPUTER PRODUCTS (ASIA) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5594

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 20 2000

x - x

DECISION

This petition for review is seeking for the refund or issuance of tax credit certificate in the amount of P925,041.23, representing unutilized input value-added tax (VAT, for brevity) attributable to zero-rated export sales for the period January 1, 1996 to March 31, 1996.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with office address located in Special Export Processing Zone, Laguna Technopark, Binan, Laguna. It is engaged in the business of manufacturing computer parts or diskettes. It is an export enterprise registered with the Export Processing Zone Authority pursuant to the provisions of the Omnibus Investments Code of 1987 bearing Certificate of Registration No. 94-28, dated May 11, 1994 (Annex B). It is likewise registered with the Bureau of Internal Revenue as a VAT-registered entity with VAT Registration Certificate No. 003-877-830, dated June 28, 1994 (Annex A).

For the period January 1, 1996 to March 31, 1996, petitioner filed its quarterly VAT return on April 22, 1996, showing a total input tax payment in the sum of P925,041.23 (Annex C) which petitioner alleges to be payment of input VAT on domestic purchases of taxable goods and services.

On March 30, 1998, petitioner filed with the Tax & Revenue Group of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance an application for tax credit/refund of value-added tax paid for the period January 1, 1996 to March 31, 1996, in the amount of P925,041.23, representing input tax payments attributable to its zero-rated export sales (Annex "D").

Without waiting for an action from the respondent, petitioner on March 31, 1998, filed the instant petition for review in order to toll the running of the two-year prescriptive period pursuant to Section 230 of the Tax Code, as amended

In his Answer, respondent raises the following Special and Affirmative defenses:

> 5. "Petitioner's claim for refund/tax credit is still undergoing administrative routinary investigation/examination;
>
> 6. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
>
> 7. The total amount of P925,041.23 claimed by petitioner as excess creditable VAT input taxes was not properly documented;
>
> 8. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

9. In an action for tax refund/credit, the burden of proof is upon the taxpayer who must establish his right to refund and failure to sustain the burden is fatal to the action for tax refund/credit;

10. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code, as amended; and

11. Well-settled is the rule that claims for tax credit/refund are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax and it is incumbent upon the petitioner to show that it is entitled thereto under the law.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P925,041.23.

We answer in the negative.

The instant petition deserves an outright denial for failure of petitioner to file its formal offer of evidence that will support its claim for refund.

The records show that petitioner failed to formally offer the documentary exhibits presented during trial. When the original counsel, Atty. Jaurigue did finally present evidence, it consisted only of four (4) documents contrary to the alleged "one hundred (100) more or less" documents which he failed to formally offer as evidence. Moreover, this Court finds it disconcerting why petitioner did not exert any effort to get a certification from the commissioned independent CPA regarding the examination of documents supporting its claim and formally offer it as evidence. Petitioner's counsel thought of the same only after the case was considered by this Court as submitted for decision. It becomes apparent from the records that counsel of petitioner lost interest in pursuing his case, which conclusion is bolstered by the fact that apart from failing to formally offer evidence, he has incurred absences from the scheduled trials and also did not bother to submit a memorandum. It is a basic rule that a court shall consider no evidence which has not been formally offered (Section 35 of Rule 35 of the Rules of Court) and non-compliance with this rule proves fatal to the instant claim. The Supreme Court has categorically declared that a "claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund (**Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**). Failing this, the conclusion of denial is inevitable.

It is to be noted that after this case was deemed submitted for decision on August 12, 1999 and was currently being studied by this Court, petitioner belatedly filed a Motion for Leave of Court to Admit Formal Offer of Evidence. This Court denied this Motion in a resolution dated September 24, 1999, citing as a primary reason the failure of petitioner's counsel to avail of the opportunities given during trial to file the formal offer of evidence despite the lapse of considerate length of time which can be largely attributed to negligence. We cite the recent case of **Citytrust Realty Corp. vs. CIR, CA G.R. Sp 36487, May 31, 2000** affirming our decision in CTA Case No. 4727 in support of this stand. Despite this denial, Petitioner subsequently filed an Omnibus Motion for Leave of Court to Reopen Trial to Present Additional Evidence and to Avail of the Procedure on the Presentation of Voluminous Documents Under CTA Circular No. 1-95, as amended by CTA Circular No. 10-97. This Omnibus Motion was denied in a Resolution dated February 29, 2000. From this denial, Petitioner persistently filed another Motion for Reconsideration on March 21, 2000 which was again denied in a Resolution dated May 31, 2000. To put a stop to the seemingly endless Motions for

Reconsideration being filed by Petitioner, the Court resolved to consider the case submitted for decision as of June 16, 2000.

In sum, no evidence was deemed presented by the Petitioner in the instant case hence we have no choice but to deny the claim for refund.

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

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