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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION (MANILA BRANCH),
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5746

Promulgated:

JAN 04 2001

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DECISION

This is a Petition for Review filed by Petitioner seeking for the refund or issuance of a tax credit certificate in the amount of ONE MILLION EIGHTY NINE THOUSAND FIVE HUNDRED FIFTY TWO and 37/100 PESOS (P1,089,552.37) allegedly representing the excess unutilized input value-added tax (VAT) payments on its purchases of taxable goods and services for the taxable year 1997.

The stipulated facts as admitted by the parties are as follows:

"1. Petitioner is a resident foreign corporation organized and existing under and by virtue of the laws of Japan but duly licensed to do business in the Philippines, through its Manila Branch with office at the 20/F Pacific Star Bldg., Sen. Gil Puyat Avenue, Makati City;

2. Respondent is the duly appointed Commissioner of Internal Revenue, vested by law with power and authority to act and decide upon applications for refund or tax credit of excess internal revenue tax payments, as provided by law, with office at the 5/F, BIR, National Office Building, Diliman, Quezon City;

3. Petitioner is duly licensed, among others, to engage in the business of purchase, acquisition, import and export, sale on wholesale

basis and indenting of all kinds of merchandise of goods as well as to engage in manufacturing activities;

4. Pursuant to Section 107 of the National Internal Revenue Code, as amended by Executive Order No. 23, Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer, with Registration No. 000-164-832-V;

5. Petitioner is subject to Value-Added Tax at zero-rate (0%) on its sales of indenting services pursuant to Section 102 (b) (2) now Section 108(B)(2) of the Tax Code, as decided in the decisions of this Honorable Court in CTA Case Nos. 5159, 5221 and 5537;

6. Petitioner timely filed with the BIR its quarterly VAT returns for the year 1997;

7. To date, Respondent has neither approved nor denied the duly filed application for tax credit or refund submitted by Petitioner to the Revenue District Office of the BIR;

8. Petitioner has duly filed this instant Petition for Review within the two-year prescriptive period prescribed by then Section 230 of the Tax Code."

(Joint Stipulation of Facts and Issues, September 22, 1999, pp. 47-48, CTA docket)

In compliance with the VAT provisions of the Tax Code and its implementing rules and regulations, Petitioner on various dates from April 18, 1997 to January 14, 1998, filed with the BIR its quarterly VAT returns for taxable year 1997. Said VAT returns showed that Petitioner has an aggregate amount of taxable sales of P109,090.91 with the corresponding output VAT of P10,909.09; zero-rated sales of P11,342,128.14; input VAT paid of P1,100,461.46 on domestic purchases of taxable goods/services and excess unutilized input VAT of P1,089,552.37, broken down as follows:

Exh.	1997	Taxable Sales	Output VAT ((2)	Zero-rated Sales	Input VAT on Purchases of Goods/Serv. (1)	Excess Unutilized Input VAT (1) less (2)
W-1	1st qtr			P 1,977,549.54	P 157,688.28	P 157,688.28
W-2	nd qtr	P 45,454.55	P 4,545.45	9,364,578.60	269,559.25	265,013.80

W-3	3rd qtr	63,636.36	6,363.64		207,214.58	200,850.94
W-4	4th qtr				465,999.35	465,999.35
		P 109,090.91	P 10,909.09	P11,342,128.14	P1,100,461.46	P 1,089,552.37

On March 4, 1999, Petitioner filed with the BIR an application for tax Credit/Refund of value-added tax paid in the amount of P1,089,552.37 on purchases of taxable goods and services allegedly directly attributable to its zero-rated sales of services for the year 1997 in accordance with Section 112(A) of the Tax Code. However, as Respondent failed to act upon said claim for refund and the two-year prescriptive period provided by law was then about to expire, Petitioner was constrained to file the instant Petition for Review on March 24, 1999.

In answer to the said Petition for Review, Respondent for his part raised the following Special and Affirmative Defenses, to wit:

> "5. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;
>
> 6. Petitioner has not shown proof that the alleged VAT input taxes are attributable to its export sales and that the same have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;
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> 7. The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid;
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> 8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;
>
> 9. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

10. Well-settled is the rule that claims for refund are construed against the claimants since it partakes of the nature of an exemption from taxation."

During the course of the trial, Petitioner formally offered the following documentary evidence which were properly identified by its witness:

Exhibit	Description
A to V	Various credit advices for the year 1997
W-1	VAT return for the 1st qtr. Of 1997
D, E, F	Vat returns for the 2nd, 3rd and 4th qtr. of 1996
G, H	Written claim for refund filed with the BIR and BIR Form No. 2552
I	Report of the Independent Auditor
1-1 to 1-93 2-1 to 2-70 3-1 to 3-86 4-1 to 4-83	Photocopies of invoices/receipts issued to Petitioner for the 1st, 2nd, 3rd and 4th quarter of CY 1996

The issues to be resolved in the case at bar which are stipulated by the parties in their Joint Stipulation of Facts and Issues (CTA records, pp. 48 and 49) are as follows:

"1. Whether or not Petitioner has unutilized input taxes in the amount of P1,089,552.37 for the period of January 1 to December 31, 1997, which are directly attributable to its zero-rated sales;

2. Whether or not the input taxes incurred by Petitioner for the period of January through December 1997 are duly substantiated by official receipts and invoices;

3. Whether or not Petitioner generated zero-rated sales for the period January 1 to December 31, 1997;

4. Whether or not the input taxes incurred by the Petitioner for the year 1997 have been carried over to the succeeding year;

5. Whether or not Petitioner is entitled to a tax credit certificate/refund in the aggregate amount of P1,089,552.37 representing the amount of input taxes paid on its purchases of goods and services for the period January 1 to December 31, 1997."

Considering that the third issue is substantial to the resolution of the other issues as it predetermines the verdict as to the others, this Court finds it necessary to preemptorily discuss first the merit of the said third issue before proceeding with the other issues at hand.

Records show that Petitioner is a VAT registered entity (Admitted fact par. 4 of Joint Stipulation of Facts and Issues, CTA records p. 48) which derived sales amounting to P11,342,128.14 from indenting services (Exhs. W-1 and W-2; TSN, October 14, 1999) for the year 1997, said sale of services were paid for in acceptable foreign currency inwardly remitted to the Philippines in accordance with the BSP rules and regulations as evidenced by the various RCBC bank credit advices (Exhs. A to V, inclusive, TSN, October 14, 1999). The evidence presented by Petitioner leads this Court to conclude that Petitioner is a zero-rated VAT taxpayer falling squarely within the provisions of Section 102(a) and (b) of the Tax Code, to quote:

> "**Section 102.** (a) *Rate and base of tax* – There shall be levied, assessed and collected, a value added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, x x x
>
> (b) *Transactions subject to zero-rate* – The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

(1) x x x

(2) Services other than those mentioned in the preceding subparagraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas x x x (underscoring supplied)

On the basis of the foregoing, it could be said that Petitioner is not liable to pay any output tax thereon and can claim tax credit/refund of the input VAT it paid on purchases of goods, properties or services which are related to such zero-rated sales. Thus, Section 4.102-2 of Revenue Regulation No. 7-95 in relation with Sections 110(B) and 112(A) of the 1997 Tax Code provides:

"Section 4.102-2. Zero-Rating. – (a) In general. – A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations."

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"Section 110. Tax Credits. –

(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.

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"Section 112. Refunds or Tax Credits of Input Tax. –

(A) 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 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 sale 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 attributable to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Having proven that Petitioner generated zero-rated sales, this brings us to the second issue of whether or not the input taxes incurred by Petitioner are duly substantiated by official receipts and invoices.

A circumspect examination of all the records of this case reveals failure on the part of Petitioner to fully substantiate the input taxes incurred from the period of January to December 1997. The commissioned auditing firm, SGV and Co., noted in its report (Exh. Y) that out of the total input taxes of P1,100,461.46 declared by Petitioner in its 1997 quarterly VAT returns, the amount of P224,568.51 (Exh. Y-1, detailed per Annexes 1 to 4 of Exh. Y) was not properly substantiated by VAT invoices and/or official receipts. Same findings were arrived at by this Court upon verification of Petitioner's suppliers invoices and official receipts (Exhs. A-1 to A-80, B-1 to B-93, C-1 to C-131 and D-1 to D-111, inclusive). As the said SGV report was found to be in order, this Court is inclined to adopt said findings and consider only the amount of P875,892.95 as the total input taxes (net of the P224,568.51 exceptions noted by SGV and Co.) incurred by Petitioner for the year 1997. True enough, said input taxes are the only amounts which were properly supported by VAT invoices and official receipts in accordance with Section

4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code, to wit:

> "**SEC. 4.104-5. Substantiation of claims for input tax credit.** – (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code.
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> x x x x x x x x x
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> **Sec. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.** –
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> **(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
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> (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.
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> x x x x x x x x x
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> **Sec. 237. Issuance of Receipts or Sales or Commercial Invoices.** – x x x **Provided, however,** x x x where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: **Provided, further,** That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser."

Going back to the first issue, We conclude that not the full amount of P1,089,552.37 as claimed by Petitioner, represents its 1997 unutilized input taxes which are directly attributable to its zero-rated sales. The amount of P1,089,552.37 is the excess of the total input taxes of P1,100,461.46 over the total output VAT payable of P10,909.09 reported by Petitioner in its 1997 quarterly VAT returns. Since as earlier mentioned, Petitioner was not able to fully substantiate by proper VAT invoices/receipts the total amount of P1,100,461.46 but only the amount of P875,892.95, it is essential that the total output VAT payable of P10,909.09 be taken out from the latter amount of P875,892.95 instead of the former amount of P1,100,461.46. The resulting net amount of P864,983.86 represents Petitioner's excess unutilized input taxes which are directly attributable to its zero-rated sales.

As to the fourth issue, Petitioner's 1997 excess unutilized input taxes of P864,983.86 were not carried over to the succeeding first quarter of 1998. This is evidenced by Petitioner's 1998 first quarter VAT return (Exh. X-1) wherein no amount of input tax was indicated as "VAT Input Tax Carried Over from Previous Quarter." This fact alone suffices to ascertain whether or not said input taxes were carried over to the succeeding quarters. Thus, as held by this Court in the case entitled *AMI Philippines, Inc. vs. CIR, CTA Case Nos. 5187 and 5199, October 2, 1997*, "...Not only must the Petitioner present as evidence the VAT returns for the period involved in the claim but also Petitioner's VAT Return for the immediately succeeding quarter to accurately prove that the excess input VAT sought to be refunded by the Petitioner had not been forwarded to the succeeding quarter." (citing *AMI Philippines, Inc. vs. CIR, CTA Case No. 5304, January 20, 1998*).

As to the last issue, We answer in the affirmative. On the basis of the foregoing findings, We rule that Petitioner is entitled to a tax credit certificate/refund of the 1997 excess unutilized input taxes on its purchases of taxable goods and services which are attributable to its zero-rated sales but in a reduced amount of P864,983.86 in contrast to Petitioner's original claim of P1,089,552.37.

WHEREFORE, premises considered, the Petition for Review filed by Petitioner is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE OR TO REFUND** the reduced amount of P864,983.86 in favor of the Petitioner which represents the excess unutilized input VAT payments for the period January to December 1997.

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