REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEAGATE TECHNOLOGY (PHILIPPINES),
Petitioner,

- versus -

CTA Case No. 6146

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 19 2001

x - x

DECISION

This Petition for Review filed by the above-named Petitioner on July 21,2000 is seeking for the refund or for the issuance of a Tax Credit Certificate in the amount of TWELVE MILLION TWO HUNDRED SIXTY SEVEN THOUSAND NINE HUNDRED EIGHTY ONE & 04/100 (P12,267,981.04) allegedly representing the excess input VAT paid on capital goods for the period April 1, 1998 to June 30,1999.

As jointly stipulated by the parties, the pertinent facts and issues involved in this case are as follows:

1. Petitioner is a resident foreign corporation duly registered with the Securities and Exchange Commission to do business in the Philippines, with principal office address at the new Cebu Township One, Special Economic Zone, Barangay Cantao-an, Naga, Cebu (by judicial notice, CTA Case No. 5921);
2. Respondent is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit;

3. Petitioner is registered with the Philippine Export Processing Zone Authority (PEZA) and has been issued PEZA Certificate No. 97-044 pursuant to Presidential Decree No. 66, as amended, to engage in the manufacture of recording components primarily used in computers for export. Such registration was made on 6 June 1997 (by judicial notice, CTA Case No. 5921);
4. Petitioner is a VAT-registered entity as evidenced by VAT Registration Certificate No. 97-083-000600-V issued on 2 April 1997 (by judicial notice, CTA Case No. 5921);
5. VAT returns for the period 1 April 1998 to 30 June 1999 have been filed by Petitioner;
6. An administrative claim for refund of VAT input taxes in the amount of P28,369,226.38 with supporting documents (inclusive of the P12,267,981.04 VAT input taxes subject of this Petition for Review), was filed on 4 October 1999 with Revenue District Office No. 83, Talisay, Cebu;
7. No final action has been received by Petitioner from the Respondent on Petitioner's claim for VAT refund.

The administrative claim for refund filed by the Petitioner on October 4, 1999 was not acted upon by the Respondent prompting the Petitioner to elevate the case to this Court on July 21, 2000 by way of Petition for Review in order to toll the running of the two-year prescriptive period.

For his part, Respondent filed an Answer to the instant Petition for Review and raised the following Special and Affirmative Defenses, to wit:

1. Petitioner's alleged claim for tax refund/ credit is subject to administrative routinary investigation/ examination by Respondent's Bureau;

2. Since "taxes are presumed to have been collected in accordance with laws and regulations" (*Caltex Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986*), the Petitioner has the burden of proof that the taxes sought to be refunded were erroneously or illegally collected lies on the Petitioner (*sic*);

3. In *Citibank, N.A. vs Court of Appeals, 280 SCRA 459 (1997)*, the Supreme Court ruled that:

> "A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit/refund"

4. Claims for tax refund/ tax credit are construed in "strictissimi juris" against the taxpayer (*Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, 30 January 1979, 31 SCRA 95 [1979]*). This is due to the fact that claims for refund/credit partakes the nature of an exemption from tax. Thus, it is incumbent upon the Petitioner to prove that it is indeed entitled to the refund/ credit sought. Failure on the part of the Petitioner to prove the same is fatal to its claim for tax credit. He who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (*Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466*);

5. Granting, without admitting, that Petitioner is a Philippine Economic Zone Authority (PEZA) registered Ecozone Export Enterprise, then its business is not subject to VAT pursuant to Section 24 of Republic Act

No. 7916 in relation to Section 103 of the Tax Code, as amended. As Petitioner's business is not subject to VAT, the capital goods and services it alleged to have purchased are considered not used in VAT taxable business. As such, Petitioner is not entitled to refund of input taxes on such capital goods pursuant to Section 4.106-1 of Revenue Regulations No. 7-95, and of input taxes on services pursuant to Section 4.103-1 of said regulations.

6. Petitioner must show compliance with the provisions of Section 204(c) and 229 of the 1997 Tax Code on the filing of a written claim for refund within two (2) years from the date of payment of tax.

In order to substantiate its claim for refund, Petitioner presented the following documentary evidence which have been duly admitted by this Court in its Resolution dated January 11, 2001, thus:

Exhibit	Description
A	Certificate of Registration No. 97-044 issued by PEZA
B	VAT Certificate of Registration issued on April 2, 1997 bearing RDO Control No. 97-083-000600-V
C	Application for refund of VAT input filed with BIR RDO no. 83, Cebu City
CC	Duly Accomplished Application for Tax Refunds/ Credits (BIR Form 1914)
D	SEC Certificate of Registration bearing SEC Reg. No. A1997-1382 dated March 5, 1997
E to BB	Monthly VAT Declarations and Quarterly VAT Returns covering the period January 1, 1998 to November 1999
DD	Summary of Input Taxes for the 1st Quarter of 1998 up to the second quarter of 1999

DD-1 to DD-22 Various Invoices and Official Receipts issued by suppliers to the Petitioner

On the other hand, counsel for the Respondent opted not to present any controverting evidence and instead submitted his case based on the pleadings. The case was then submitted for decision on May 7, 2001, after both parties presented their respective memorandum.

The issues to be resolved by this Court, as jointly stipulated by the parties, are as follows:

1. Whether or not the Petitioner complied with the requirements necessary for the refund of input taxes amounting to P12,267,981.04 covering the period 1 April 1998 to 30 June 1999;

2. Whether or not the instant Petition for Review was filed within the period for filing a judicial claim for refund of input taxes;

3. Whether or not the Petitioner has unutilized input VAT of P12,267,981.04 covering the period 1 April 1998 to 30 June 1999;

4. Whether or not input taxes subject of the claim for refund were paid on importation or purchase of capital goods;

5. Whether or not the input taxes subject of the claim for refund were substantiated by VAT Invoices and/or VAT Official Receipts;

6. Whether or not Petitioner is entitled to the refund of the amount of P12,267,981.04 as alleged unutilized input VAT payment for the second quarter of 1998 up to the 2nd quarter of 1999 pursuant to Section 4.106-1 and Section 4.103-1 of Revenue Regulations No. 7-95.
(Joint Stipulation of Facts & Issues, CTA records, pages 56-59)

All of the above issues are thus centered on: **"Whether or not Petitioner is entitled to a refund in the amount of P12,267,981.04 representing unutilized input VAT paid on capital goods purchased for the period of April 1, 1998 to June 30, 1999."**

In asseverating that he is indeed entitled to the refund sought for in the instant case, Petitioner relied on Section 112(B) of the National Internal Revenue Code of

1997 in relation to Section 4.106-2(c) and Section 4.104-5 of Revenue Regulations No. 7-95, which are hereunder quoted as follows:

> ***"Section 112. Refunds or Tax Credits of Input Tax.-***
>
> (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."
>
> ***"Section 4.106-2 Period within which refund or tax credit of input taxes shall be made.-***
>
> (c) In proper cases, the Comm'ssioner 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.
>
> 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."
>
> ***"Section 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.
>
> x x x x x x"

On the basis of the foregoing provisions of law and regulation, this Court ruled that in order to be entitled to the VAT refund sought, it is imperative for the Petitioner to comply with the following requisites:

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 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 administrative and judicial claims for refund were filed within the two-year prescriptive period.

A review of Petitioner's documentary evidence shows that Petitioner met all of the above requirements but only insofar as the amount of P12,122,922.66 out of its total claim for refund of P12,267,981.04.

It is an undisputed fact that Petitioner is duly registered as a VAT entity as evidenced by the VAT Certificate of Registration issued by the Revenue District Office No.83 of the Bureau of Internal Revenue on April 2, 1997 with RDO Control No.97-083-000600-V (Admitted fact, CTA records, page 57; Exhibit B);

The various suppliers' invoices/official receipts (Exhibits DD-1 to DD-22, inclusive) clearly show that for the period of April 1, 1998 to June 30, 1999, Petitioner paid input taxes on purchases related to the construction of its plant and building which can be classified as capital goods as defined in Section 4.106-1(b) of Revenue Regulations No. 7-95, thus:

"Section 4.106-1. Refunds or tax credits of input tax.-

> (b) Capital goods.-Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally-purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> x x x x x x
>
> *"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.

It is worthy to note that the suppliers' invoices/official receipts submitted to this Court were found to be valid VAT invoices/official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 as earlier quoted.

However, upon careful review of the records of this case, this Court discovered some notable exceptions that could be subject to disallowance. Out of the claimed input taxes of P12,267,981.04, the amounts of P143,908.38 and P1,150.00 or a total of P145,058.38 should be disallowed. The reason being that the amount of P143,908.38 pertains to input taxes paid by Petitioner for the 3rd quarter of 1998 to the second quarter of 1999 on security services rendered by Centurion Security Agency which cannot be classified as capital goods. As to the input taxes of P1,150.00, the same were supported only by a provisional receipt. Below is a detailed breakdown of the disallowed amounts:

1.) Claimed input taxes on purchases not classified as capital goods

Period Covered	Exh.	Inv. Amount	Claimed Input VAT	Total Disallowances
3rd qtr-'98	DD-4	P 155,435.90	P 14,130.54	
	DD-5	156,986.52	14,271.50	
	DD-7	122,515.58	11,137.78	

4th qtr-'98	DD-9	123,753.08	11,250.28	
	DD-21	123,670.58	11,242.78	
	DD-22	112,468.80	10,224.44	
1st qtr-'99	DD-15	112,762.10	10,251.10	
	DD-16	112,468.80	10,224.44	
2nd qtr-'99	DD-17	225,230.90	20,475.54	
	DD-18	112,468.80	10,224.44	
	DD-19	112,468.80	10,224.44	
	DD-20	112,762.10	10,251.10	P 143,908.38

2.) Claimed input taxes supported only by a provisional receipt

Period Covered	Exh.	Inv. Amount	Claimed Input VAT	
4th qtr-'98	DD-13	P 12,650.00	P 1,150.00	1,150.00
				P 145,058.38

Petitioner's amended quarterly VAT returns for the period covered by the instant Petition, i.e., from the second quarter of 1998 to the second quarter of 1999 (Exhibits J-1, M, Q-1, T-1 & W-1) established that the claimed input taxes of P12,267,981.04 were not applied against any output VAT liability. Moreover, the claimed input taxes of P12,267,981.04 were included in the total input taxes of P52,582,756.36 deducted as "Any Refund/TCC Claimed" from the "Total Available Input Taxes" of P52,638,925.84 resulting to an amount of P56,169.48 "Excess Input Taxes" (Exhibit AA-1) reflected in Petitioner's October 1999 Monthly VAT Declaration (Exhibit AA) showing that Petitioner did not carry-over the claimed input taxes of P12,267,981.04 in its November 1999 Monthly VAT Declaration (Exhibit BB).

This Court is likewise convinced that the filing of an application for refund with the Respondent as well as the Petition for Review with this Court fell within the reglementary period required by law. A perusal of the records would reveal that both the administrative and judicial claims for refund filed on October 4, 1999 (Exhibit C) and July 21, 2000, respectively, were filed within the two-year prescriptive period provided under Section 4.106-2(c) of Revenue Regulations No. 7-95 counted from July 27, 1998, the date when Petitioner filed its original 1998 second quarterly VAT return (Exhibit J) ***(See Nichimen Corporation Philippine Branch vs Commissioner of Internal Revenue, CTA Case No. 5389, January 4, 1999)***

As regards Respondent's contention that Petitioner being a PEZA registered enterprise, is not subject to VAT pursuant to Section 24 of RA 7916 and thus not entitled to a VAT refund, the same has already been settled in the case of ***Seagate Technology (Philippines) versus Commissioner of Internal Revenue, CTA Case No. 5999, April 23,2001,*** where this Court has quoted in verbatim the resolution it promulgated on September 20, 2000, thus:

> "Respondent is correct in arguing that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from the payment of the VAT pursuant to the provisions of Section 24 of Republic Act No. 7916, to quote:
>
> > "*Section 24. Exemption from Taxes Under the National Internal Revenue Code.*- Any provision of existing laws, rules and regulations to the contrary nothwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government x x x."
>
> However, we do not agree that the aforequoted law is applicable to the case at bar. Section 23 of Republic Act No. 7916 provides:
>
> > "*Section 23. Fiscal Incentives.*- Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided for under

> Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987."
>
> Under the aforementioned law, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, that which is provided for under Presidential Decree No.66, as amended, and Section 24 of RA 7916 which includes the 5% [preferential tax on gross income earned, which is in lieu of national and local taxes and second, as that provided under Book VI of Executive Order No.226, including but not limited to an income tax holiday (ITH) of 4 or 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. 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. These were explicitly elucidated by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99 and 063-99. ***(Seagate Technology (Philippines) vs. CIR, CTA Case no.5921, Resolution dated September20,2000)***

This aforequoted ruling of the Court was recently affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Seagate Technology CA-G.R. SP. No. 61189 promulgated on June 18, 2001**.

All told, Petitioner is entitled only to the substantiated amount of P12,122,922.66 which was arrived at after deducting the disallowances of P145,058.38 from the total claim for refund of P12,267,981.04.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of the Petitioner the reduced amount of **P12,122,922.66** representing the unutilized input VAT paid on capital goods purchased for the period covering April 1, 1998 to June 30, 1999.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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