REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC., ***Petitioner,***	**C.T.A. CASE NO. 6631**
	Members:
	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	SEP 2 7 2005 [signature]

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed by AT&T Communications Services Philippines, Inc. (hereafter "petitioner"), which involves a claim for refund or issuance of a tax credit certificate in the amount of P2,039,577.49, allegedly representing unutilized input value added tax on domestic purchases of goods and services attributable to petitioner's zero-rated sales of services for the calendar year ended December 31, 2001.

THE FACTS

The facts as stipulated by the parties are as follows:

"1. Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor, BA-Lepanto Building, 8747 Paseo de Roxas, Makati City.

2. Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested by law to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes including excess or unutilized input Value Added Tax (VAT) payments. He may be served with summons and other legal processes of this Honorable Court at the 4th Floor, BIR National Office Building, Diliman, Quezon City.

3. Petitioner is registered with the BIR as a VAT Taxpayer Identification No. 050-004-519-384 as shown in its BIR Certificate of Registration.

4. Petitioner is principally engaged in the business of rendering information, promotional, supportive and liaison services, particularly to AT&T Communications Services International, Inc. (AT&T-US) and AT&T Solutions, Inc. (AT&T-SI), both of which are corporations organized and existing under the laws of the State of Delaware, USA and are not engaged in trade or business in the Philippines.

5. Under the Service Agreement of Petitioner with AT&T-US, the former shall undertake various information and promotional services in the Philippines for AT&T-US. Compensation for such

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services is paid in US Dollars and inwardly remitted to Petitioner in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

6. Petitioner's Assignment Agreement with AT&T-SI stipulates the performance by Petitioner of the duties, liabilities and obligations of AT&T-SI in connection with the assigned services portion of the Virtual Private Network Services Agreement between AT&T-SI (assignor) and Mastercard International, Inc. (customer). Petitioner shall render the services to the customer, a non-resident foreign corporation. Compensation for such services is likewise paid in US Dollars to be inwardly remitted to the Philippines by AT&T-SI, which acts as the collecting agent of the Petitioner.

7. The filing by Petitioner of the Original Quarterly VAT Return with the BIR for the period January 1, 2001 to December 31, 2001.

8. The filing by Petitioner of the Amended Quarterly VAT Returns with the BIR for the period January 1, 2001 to December 31, 2001.

9. Petitioner filed with the BIR an application for tax credit and/or refund on March 28, 2002 requesting for the refund of the amount of P2,039,577.49 representing excess/unutilized VAT input taxes paid for the period January 1, 2001 to December 21, 2001.

10. The said application was filed within the two-year prescriptive period to file similar claims for tax credit and/or refund as provided for under Section 4.106-1 of Revenue Regulations No. 7-95.

11. To date, respondent has not yet approved the aforesaid application."

In his Answer, respondent alleged the following special and affirmative defenses:

"4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended;

9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**)."

Petitioner presented Rodolfo Ocuaman, Jr. and Ruben R. Rubio, as witnesses, and documentary evidence marked as Exhibits "A" to "FFF-2", inclusive of their submarkings.

On the other hand, at the hearing on April 20, 2005, counsel for respondent manifested that he will no longer present evidence, and moved for thirty (30) days within which to file their simultaneous memoranda, which the Court granted.

Considering that only petitioner filed its Memorandum, the case was submitted for decision on July 15, 2005.

ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

> Whether or not Petitioner's sale or services to AT&T-US and AT&T-SI for the period January 1, 2001 to December 31, 2001 are zero-rated for VAT purposes from which it generated revenue in the amount of P79,932,447.45.

II

> Whether or not Petitioner's zero-rated sales for the period January 1, 2001 to December 31, 2001 were paid for in acceptable foreign currency inwardly remitted and duly

accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP).

III

Whether or not the amount of P2,039,577.49 representing unutilized/excess input VAT paid by Petitioner for the period January 1, 2001 to December 31, 2001 is attributable to its zero-rated sales.

IV

Whether or not the amount of P2,039,577.49 representing unutilized/excess input VAT paid by Petitioner for the period January 1, 2001 to December 31, 2001 was not utilized nor applied against its output VAT liabilities for the subsequent taxable quarters.

V

Whether or not Petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P2,039,577.49 representing/excess input VAT paid by Petitioner for the period January 1, 2001 to December 31, 2001.

THE COURT'S RULING

The petition is partly meritorious.

The law applicable is *Section 112(A) of the National Internal Revenue Code* (hereafter "NIRC") *of 1997, as amended*, which provides:

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

(A) Zero-rated or Effectively Zero-rated Sales. 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 attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Corollarily thereto, *Section 108 (B)(2) of the same Code*, provides:

"SEC. 108. *Value-Added Tax on Sale or Services and Use or Lease of properties.-*

(A) *Rate and Base of tax.* – xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

(1) xxx;

(2) Services other than those mentioned in the preceding subparagraph, the

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> 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 (BSP)."

Pursuant to the above provisions, petitioner must prove that:

1) it is a VAT-registered person;

2) its sales are zero-rated;

3) the administrative claim for refund was seasonably filed;

4) the input taxes claimed were attributable to zero-rated sales and were not applied against the output tax liability; and

5) the foreign currency exchange proceeds had been duly accounted for in accordance with the regulations of Bangko Sentral ng Pilipinas.

After a careful examination of the evidence on record, the Court finds that the petitioner has complied with the aforequoted requisites.

As regards the first requisite, in paragraph 3 of the parties' Joint Stipulation of Facts and Issues, the parties stipulated that "petitioner is registered with the BIR as VAT taxpayer with Taxpayer Identification No. 050-004-519-384, as shown in its BIR Certificate of Registration."

With regard to the second requisite, petitioner was able to establish compliance with this requirement through the presentation of its various VAT sales invoices (*Exhibits "YY-1" to Exhibits "DDD-219"*), Service Agreements (*Exhibits "A" and "C"*), Letters of Assignment (*Exhibits "B, "D" and "E"*), and Citibank credit advices (*Exhibits "QQ" to Exhibits "RR"*). These documents prove that petitioner is rendering services to non-resident foreign corporations, the consideration of which were paid for in US dollars and were accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Hence, pursuant to the aforequoted *Section 108(B)(2) of the NIRC of 1997, as amended*, they are subject to VAT at 0%.

Furthermore, the accuracy of petitioner's sales of services was attested to by the commissioned independent CPA in his report dated June 2, 2004 (*Exhibit "WW"*).

Clearly, petitioner has indeeed generated zero-rated sales of services.

The third requisite was also stipulated by the parties in paragraph 10 of their Joint Stipulation of Facts and Issues.

Furthermore, pursuant to the aforequoted *Section 112*, petitioner 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 taxes. In this case, petitioner is seeking refund of input VAT for the four quarters of the calendar year 2001.

The earliest quarter covered by the instant claim is the first quarter of 2001 ending in March 31. Counting from this date, petitioner had until March 31, 2003 within which to file its claim for refund/tax credit both in the administrative and judicial levels. Since the administrative claim for refund was filed on March 28, 2003 and the present Petition for Review was filed on March 31, 2003, both the administrative and judicial claims were filed within the two-year prescriptive period. Similarly, the applications for refund for the second, third and fourth quarters of 2001 were also timely filed.

As regards the fourth requisite, petitioner has generated total input taxes for the year 2001 in the amount of P2,699,064.54 arising from its purchases of goods and services which were used to generate both vatable sales (10%) and zero-rated sales (0%). However, pursuant to *Section 112*, only unapplied input VAT attributable to zero-rated sales can be a subject of a claim for refund. Consequently, petitioner should prove that the total amount of P2,039,577.49 sought to be refunded is all attributable to its zero-rated sales of services.

In its memorandum, petitioner apportioned its total input taxes for the year 2001 between zero-rated and vatable sales based on the formula We adopted in the case of *American Express International, Inc. – Philippine Branch vs. Commissioner of Internal Revenue, C.T.A. Case No. 5813, dated January 2, 2001*, as follows:

The formula for allocation of input VAT to domestic sales is:

<u>Domestic Sales</u> Total Sales	x	Total VAT input taxes	=	VAT input taxes allocated to domestic sales

Thus,

<u>P6,594,817.11</u> P86,527,264.56	x	P2,699,064.54	=	P205,713.62

While the formula for input VAT allocated to zero-rated sales is:

<u>Zero-rated Sales</u> Total Sales	x	Total VAT input taxes	=	VAT input taxes allocated to zero-rated sales

<u>P79,932,447.45</u> P86,527,264.56	x	P2,699,064.54	=	P2,493,350.92

Applying the input VAT allocated to vatable sales of P205,713.62 against the 2001 output VAT liability of P659,487.05 would result to remaining output VAT liability of P453,773.43. The latter amount can be offset by petitioner against its input VAT allocated to zero-rated sales of P2,493,350.92, thereby still leaving an unutilized input VAT attributable to zero-rated sales of P2,039,577.49, computed as follows:

Remaining output VAT	P 453,773.43
Less: input VAT allocated to zero-rated sales	2,493,350.92
Total unutilized input VAT	**P2,039,577.49**

From the above, We find that the remaining unutilized input VAT are all attributable to petitioner's zero-rated sales. Furthermore, petitioner has also established that the latter amount was not applied against its future output VAT liability. In fact, it was already deducted from petitioner's total available input taxes as of March 31, 2002, as evidenced by the 2002 first quarterly VAT return (*Exhibit "UU-2"*).

Anent the fifth requisite, petitioner was able to prove that the foreign currency exchange proceeds in US dollars, representing payments for its management services, were duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas. They were inwardly

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remitted and deposited in its Citibank Account No. 0/601563/029, as evidenced by various Citibank official computer generated advices (*Exhibits "BBB-1" to "BBB-64"*).

However, as admitted by petitioner, not all the input taxes sought to be refunded are supported by valid VAT invoices and official receipts. In his report dated June 2, 2004 (*Exhibit "WW"*), the commissioned independent CPA, Mr. Ruben R. Rubio, stated that input taxes in the amount of P36,145.90 were not properly documented for VAT purposes. Hence, the same should be deducted from the original input VAT claim of petitioner.

Likewise, in the same report the commissioned independent CPA noted that several input taxes claimed for in the refund are attributable to transactions transpiring outside the period of claim, to quote:

> "Moreover, we would like to mention the following observations for your additional information:
>
> 1. There are input taxes claimed on purchases of services amounting to P27,449.27 which were supported by VAT Ors dated outside the period of claim (i.e. January 2002). (*Annex F*)
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> xxx xxx xxx

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2. There are input taxes claimed on purchases of goods amounting to P38,613.46 which were supported by VAT invoices dated outside the period of claim (i.e., December 2000). (*Annex G*)"

Petitioner contends that the foregoing input taxes were not claimed in the quarters they were incurred and it was also ascertained in the same CPA report that there was no double claiming relative to these input taxes since the same were all claimed in 2001.

Petitioner's contention is without merit.

The law is explicit; it states "upon consummation," in the case of domestic purchases of goods, and "upon payment," in the case of purchases of services. In *Telecommunications Technologies Phil., Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 6168, promulgated on July 17, 2003 with Entry of Judgment dated October 4, 2004*, this Court has had the occasion to rule that the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser only upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/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 of the payment for services performed or yet to be performed.

Contrary to petitioner's assertions, the law and jurisprudence is clear that the input tax shall be allowed as tax credit to the purchaser only upon consummation of sale or upon payment of the compensation, as the case may be. Accordingly, it is imperative for petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

It must be noted that the instant claim for refund covers the whole period of 2001 only. Thus, the amount of input VAT of P38,613.46 which is supported by VAT invoices pertaining to year 2000, dated earlier than the period of petitioner's claims, can no longer be claimed for refund, pursuant to *Section 110(A)*, in relation to *Section 112(A) of the NIRC of 1997, as amended.* Likewise, for the same reason, the amount of input VAT of P27,449.27 which is supported by VAT Official Receipts dated 2002, a much later date than the period of petitioner's claims, can not also be included in the instant petition for refund.

In sum, petitioner is entitled to the refund of unutilized input VAT, but in the reduced amount of P1,937,368.86, computed as follows:

Total input VAT claimed per Petition for Review	P2,039,577.49
Less: Exceptions made by the commissioned Independent CPA	
Unsubstantiated Claim	36,145.90
VAT OR pertaining to 2002	27,449.27
VAT invoices pertaining to 2000	38,613.46
Amount of input VAT supported and verified	P1,937,368.86

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** in the amount of P1,937,368.86 in favor of petitioner, representing unutilized input VAT for the period January 1, 2001 to December 31, 2001.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division