REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PENN PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7134

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAY 16 2008
10:45 a.m.

x- x

DECISION

UY, *J*.:

This is a Petition for Review filed by petitioner, Penn Philippines, Inc., against respondent Commissioner of Internal Revenue, seeking the refund or issuance of tax credit certificate in the amount of **Nine Million One Hundred Eighty Four Thousand Six Hundred Eleven and 77/100 PESOS (P9,184,611.77),** allegedly representing petitioner's unutilized input value-added taxes (VAT) for the period covering the fourth (4^{th}) quarter of 2002 and all the four (4) quarters of 2003 arising from its domestic purchases of goods and services and importation of capital goods attributable to its zero-rated sales of textile and other allied products.

THE FACTS

Culled from the records of this case, and as stipulated by the parties in their Joint Stipulation of Facts and Issues[1], these are the facts of the case.

Petitioner, Penn Philippines, Inc., is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with Securities and Exchange Commission (SEC) Registration No. 76226. Petitioner's corporate name of Penn Philippines, Inc. was approved by SEC on November 15, 1995. Formerly, its corporate name was Penn Gold-Zack Philippines, Inc. and prior to that, the original corporate name of petitioner was Goldzack Philippines, Inc. Its office address is located at FTI Avenue, FTI Complex, Taguig, Metro Manila, Philippines. It is primarily engaged in the manufacture of textile products (elastic fabric) and other products allied thereto. It is a duly registered value-added tax (VAT) enterprise, having been issued Certificate of Registration No. CRC-0000015817 dated January 1, 1996 and Taxpayer's Identification No. 000282303000 by the Bureau of Internal Revenue (BIR) Large Taxpayers District Office.[2]

Respondent Commissioner of Internal Revenue is the duly appointed Commissioner of the BIR who is empowered to perform the duties of her office including among others, the duty to act on and approve claims for tax refund or tax credit as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City, Philippines.

For the period covering the fourth (4th) quarter of 2002 and all the four (4) quarters of 2003, petitioner filed with the BIR its VAT Returns reflecting

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[1] Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 73-74.
[2] Par. 2, Stipulation of Facts, JSFI.

zero-rated sales of P574,227,993.28, taxable sales of P2,553,272.10, with related output VAT of P255,327.21, and unutilized input VAT of P9,184,611.77; broken down as follows:

Exhibit	Period Covered	Zero-Rated Sales	Taxable Sales	Output VAT	Input VAT This Quarter	Input VAT Excess
A	4th qtr	P136,602,763.28	P 44,746.10	P 4,474.61	P1,626,198.90	P1,621,724.29
B	1st qtr	112,695,934.95	2,388,704.90	238,870.49	1,804,174.55	1,565,304.06
C	2nd qtr	95,550,116.04	47,450.60	4,745.06	1,278,828.90	1,274,083.84
D	3rd qtr	113,867,222.62	46,088.60	4,608.86	2,551,879.20	2,547,270.34
E	4th qtr	115,511,956.39	26,281.90	2,628.19	2,178,857.43	2,176,229.24
	Total	**P574,227,993.28**	**P2,553,272.10**	**P255,327.21**	**P9,439,938.98**	**P9,184,611.77**

Petitioner avers that the reported zero-rated sales in the amount of P574,227,993.28 pertains to its sales to Penn Philippines Export, Inc., an entity registered with the Philippine Economic Zone Authority (PEZA), which according to petitioner, qualify for VAT zero-rating pursuant to Section 106(A)(2)(c) of the National Internal Revenue Code (NIRC) of 1997, in relation to Republic Act (R.A.) No. 7916, otherwise known as the "Special Economic Zone Act of 1995" or the "PEZA Law", and Revenue Memorandum Circular (RMC) No. 74-99.

Considering that the aforementioned sales to Penn Philippines Export, Inc. are purportedly VAT zero-rated, petitioner allegedly, was unable to utilize the input VAT which it incurred/paid on its domestic purchases of goods and services (including capital goods) and importation of capital goods from the fourth (4^{th}) quarter of 2002 to the fourth (4^{th}) quarter of 2003 in the total amount of P9,184,611.77.

Relying on Sections 112(A) and (B) of the NIRC of 1997, petitioner filed an administrative claim for refund in the amount of P9,184,611.77 on

December 20, 2004.[3] Due to respondent's inaction on its refund claim, petitioner filed a Petition for Review with this Court on January 24, 2005 to toll the running of the two-year prescriptive period to file the instant claim.

Respondent, in her Answer filed through registered mail on March 28, 2005, raised the following Special and Affirmative Defenses:

"4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

5. Sales of goods, properties or services to PEZA registered enterprises do not qualify as zero-rated (0%) sale.

6. Well-settled is the rule that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (**Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241, January 28, 1999**).

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

8. 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.

9. 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 as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption

[3] Petitioner's Letter dated December 15, 2004 addressed to then Commissioner of Internal Revenue, Guillermo H. Parayno, Jr., Annex "H", Petition for Review, Docket, pp. 30-32.

> 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**)."[4]

During trial, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, did not present any evidence and instead submitted the case based on the pleadings. Correspondingly, the case was submitted for decision sans the Memorandum of respondent on May 22, 2007.[5]

THE ISSUES

The issues[6] posed for this Court's resolution are as follows:

"1. Whether or not petitioner has an unutilized input VAT in the amount of P9,184,611.77 for the period from 4th quarter of 2002 to the 4th quarter of 2003.

2. Whether or not petitioner's alleged unutilized input VAT on domestic purchases and importation of capital goods for the period from 4th quarter of 2002 to the 4th quarter of 2003 have been applied against its output taxes.

3. Whether or not the purchases and importation on which the corresponding input VAT was paid are considered as domestic purchases and importation of capital goods.

4. Whether or not the domestic purchases and importation on which the input VAT was paid are used by petitioner in its VAT taxable business.

5. Whether or not the petitioner's sales of goods and services to a PEZA-registered enterprise qualify as zero-rated sales.

6. Whether or not the petitioner's claim for refund/tax credit of alleged unutilized input VAT allegedly attributable to its zero-rated sales and domestic purchases and importation of

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[4] Answer, Docket, pp. 44-46.
[5] Resolution dated May 22, 2007, Docket, p. 310.
[6] Joint Stipulation of Facts and Issues, Docket, p. 76; Joint Manifestation and Motion to Correct the Joint Stipulation of Facts and Issues, Docket, pp. 79-80.

capital goods for the 4th quarter of 2003 in the amount of P9,184,611.77 is substantiated by documentary evidence."

THE COURT'S RULING

The petition is partly meritorious.

Section 112(A) of the NIRC of 1997 provides as follows:

> "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."

Based on the foregoing, in order to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT payments were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, petitioner maintains that its sales to Penn Philippines Export, Inc., a PEZA-registered entity, are subject to zero percent (0%) VAT.

We agree.

A VAT taxpayer's sales from the Customs Territory to a PEZA-registered entity are classified as export sales under Articles 23 and 77(1) and (2) of Executive Order (E.O.) No. 226, also known as "the Omnibus Investments Code of 1987", which provide as follows:

> **"ART. 23. '*Export Sales*'** shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further*, **That without actual exportation the following shall be considered constructively exported for purposes of this provision**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **sales to export processing zones**; xxx" (*Emphasis supplied*)
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> "**ART. 77. *Tax Treatment of Merchandise in the Zone.*** — (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.
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> (2) **Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales**

> **and the exporter thereof shall be entitled to the benefits allowed by law for such transaction**. xxx." (*Emphasis supplied*)

Moreover, Section 106(A)(2)(a)(5) of the NIRC of 1997 treats export sales governed by E.O. No. 226 and other special laws as subject to zero percent VAT, to wit:

> "**SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –**
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* – The term '*export sales*' means:
>
> xxx xxx xxx
>
> (5) **Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987**, and other special laws."

Relative thereto, RMC No. 74-99 of the BIR clarified the matter as follows:

> "**SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise. –**
>
> xxx xxx xxx
>
> 3. In the final analysis, **any sale of goods**, property or services made **by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus, legally entitled to the zero percent (0%) VAT**. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, **pursuant to Sec. 106 (A) (2) (a) (5), NIRC, in relation to Art. 77(2) of the Omnibus Investments Code**, while all

> sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT System." (*Emphasis supplied*)

Clearly, sales made by a VAT-registered entity to a PEZA-registered enterprise operating within a special economic zone (ecozone) qualify as VAT zero-rated transactions.

The Supreme Court in the case of **Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.**[7] explained the same in this wise:

> "Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent."

Admittedly, petitioner's customer, Penn Philippines Export, Inc., is an entity duly registered with the PEZA since January 19, 1998, with Certificate of Registration No. 96-066.[8] Likewise, the various VAT zero-rated sales invoices[9] submitted by petitioner proved that for the period covering the fourth (4th) quarter of 2002 to the fourth (4th) quarter of 2003, petitioner actually sold its goods to Penn Philippines Export, Inc. While the total sales amount of P573,886,267.73 reflected in the sales invoices is lower by P341,725.55 compared to the sales amount of P574,227,993.28 declared in petitioner's

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[7] G.R. No. 149671, July 21, 2006.

[8] Par. 6, Stipulation of Facts, JSFI, Docket, p. 75, Exhibit "U".

[9] Exhibits "M-3" to "M-3[98]", "M-2" to "M-2[90]", "M-1" to "M-1[58]", "N-3" to "N-3[76]", "N-2" to "N-2[68]", "N-1" to "N-1[73]", "O-3" to "O-3[82]", "O-2" to "O-2[73]", "O-1" to "O-1[60]", "P-3" to "P-3[105]", "P-2" to "P-2[91]", "P-1" to "P-1[102]", "Q-3" to "Q-3[107]", and "Q-2" to "Q-2[73]".

VAT returns[10], the binding figure shall be the amount of P574,227,993.28 as petitioner did not amend its VAT Returns for the subject period of claim.

Having found that petitioner generated VAT zero-rated sales from the fourth (4th) quarter of 2002 to the fourth (4th) quarter of 2003, We shall now determine whether or not petitioner incurred input taxes in relation to said sales.

Based on the review and validation made by the Court-commissioned Independent CPA (ICPA), out of petitioner's total reported input taxes of P9,439,938.98, the amount of P1,193,049.89[11] is not properly supported with VAT invoices/official receipts; or the same is not reported in the month/quarter of purchase or payment; or is not supported at all, and only the remaining amount of P8,246,889.09 detailed below represents petitioner's valid input tax:[12]

	Input VAT Claim	**Annexed to Exhibit AA as**
Domestic Purchases		
Goods	P 582,973.44	Q-22
Capital Goods	157,317.34	Q-23
Services	2,154,990.31	Q-24
Total Domestic Purchases	P2,895,281.09	Q-29
Total Importation of Capital Goods	5,351,608.00	Q-25
TOTAL	**P8,246,889.09**	Q-30

However, a closer scrutiny of the evidence presented reveals that the amount of P8,246,889.09 should be further reduced by P66,844.93, representing input VAT claimed on domestic purchases of capital goods, as the same is supported by an invoice bearing the supplier's pre-printed TAN

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[10] Exhibit "AA", Annex "O-21a".
[11] Exhibit "AA", p. 11, Annexes "U-23", "Q-28", "Q-26", and "Q-27".
[12] Exhibit "AA", p. 11.

instead of TIN-VAT number.[13] Thus, We find that only the input VAT claim amounting to P8,180,044.16 (P8,246,889.09 less P66,844.93) has complied with the invoicing requirements under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations (RR) No. 7-95.

Being interrelated, the third and fourth requisites shall be discussed jointly. Petitioner's VAT Returns for the subject period of claim[14] show that petitioner had taxable sales in the amount of P2,553,272.10, with the corresponding output VAT of P255,327.21. After having removed such output tax of P255,327.21 from the substantiated input VAT of P8,180,044.16, there remains an excess amount of P7,924,716.95, representing input VAT attributable to the reported zero-rated sales of P574,227,993.28.

From the first (1st) quarter of 2002 to the fourth (4th) quarter of 2004, petitioner consistently carried-over its excess input VAT to the succeeding quarters.[15] However, in its VAT Returns for the third (3rd) quarter of 2002, the first (1st) quarter of 2003, the second (2nd) , third (3rd), and fourth (4th) quarters of 2004, petitioner deducted the amounts of P10,470,709.42,[16] P12,978,523.67,[17] P11,817,540.66,[18] P2,252,871.41,[19] and P867,966.64, respectively, totaling to P38,387,611.80 as "Any VAT Refund/TCC Claimed". With the aforementioned deductions, the excess input VAT amount of P543,737.80, reflected in petitioner's VAT Return for the fourth (4th) quarter of

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[13] Exhibit "O15[3]".
[14] Exhibits "A" to "E".
[15] Exhibits "A" to "L".
[16] Exhibit "F".
[17] Exhibit "B".
[18] Exhibit "J".
[19] Exhibit "K".

2004,[20] no longer included the substantiated claim for the fourth (4th) quarter of 2002 to the fourth (4th) quarter of 2003 in the amount of P7,924,716.95. Therefore, petitioner could not have possibly carried-over or utilized the substantiated input VAT claim of P7,924,716.95 to the succeeding quarters.

Finally, as to the fifth requisite, the reckoning of the two-year prescriptive period for the filing of a VAT refund claim starts from the date of filing of the corresponding Quarterly VAT Return.[21] Hence, counting from the respective dates of filing of the Quarterly VAT Returns covering the fourth (4th) quarter of 2002 to the fourth (4th) quarter of 2003, both the administrative claim filed on December 20, 2004 and the Petition for Review filed on January 24, 2005 were timely made.

In sum, We find and so hold, that petitioner has sufficiently proven its entitlement to refund or issuance of a tax credit certificate, representing unutilized excess input taxes for the period covering the fourth (4th) quarter of 2002 and all four (4) quarters of 2003, which are attributable to its zero-rated sales for the same period, but in the reduced amount of P7,924,716.95; computed as follows:

Amount of Input VAT Claim	P 9,184,611.77
Less: Disallowances	
a. Per CPA report	P 1,193,049.89
b. Per this Court's further verification	66,844.93
Total	P 1,259,894.82
Refundable Excess Input VAT	**P 7,924,716.95**

WHEREFORE, the instant Petition for review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is

[20] Exhibit "L".
[21] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007.

hereby **ORDERED TO REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **SEVEN MILLION NINE HUNDRED TWENTY-FOUR THOUSAND SEVEN HUNDRED SIXTEEN AND 95/100 PESOS** (**P7,924,716.95**) in favor of petitioner, representing unutilized excess input taxes attributable to zero-rated sales for the period covering the fourth (4^{th}) quarter of 2002 and all four (4) quarters of 2003.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice