REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN EXPRESS INTERNATIONAL INC. – PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5475

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 16 2000

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DECISION

This petition is seeking for the refund or issuance of a tax credit certificate in the amount of P1,983,858.92 representing excess input taxes attributable to zero rated sales of services for the period January 1, 1995 to December 31, 1995 pursuant to Section 106(b) of the Tax Code, as amended.

Petitioner is a Philippine branch of American Express International, Inc., (AMEX, for brevity), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, USA, with office address at Ground Floor, ACE Building, corner Rada and De La Rosa Streets, Legaspi Village, Makati City. It is a servicing unit of AMEX-Hongkong whose primary function is to facilitate collection of AMEX receivables from card members situated in the Philippines and payment to service establishments in the Philippines.

Pursuant to Section 107 of the National Internal Revenue Code, as amended, petitioner registered itself as a value-added tax entity with VAT Registration No. 470-000-106-198V/NV effective June 30, 1994 (Exh. A).[1]

For the period January 1, 1995 to December 31, 1995, petitioner alleges that it earned revenues in the amount of P56,087,860.93 which were paid for in acceptable foreign currency inwardly remitted to the Philippines in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Petitioner further avers that these revenues were zero-rated based on Section 102(a)(2) of the 1995 National Internal Revenue Code, as amended. Also, for the same period, petitioner alleges that it incurred and paid VAT input taxes on domestic purchases of taxable goods and services in the sum of P1,983,858.32 which were all directly attributable to its zero-rated revenues.

On January 28, 1997, petitioner filed an application for tax credit/refund of value added tax paid with the Bureau of Internal Revenue in the amount of P1,983,858.32, representing unutilized input taxes for the year 1995 (Exhs. G, G-1, H, and H-1).

The inaction of the respondent on its claim for refund compelled petitioner to file the instant petition for review on March 25, 1997, pursuant to Section 230 of the National Internal Revenue Code, as amended.

Respondent in his Answer raises the following special and affirmative defenses:

> 4. Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by respondent's Bureau and petitioner's claim for refund had already cropped up, such as:

[1] The original VAT Registration Certificate was effective March 1988 with Registration No. 32A-3-004868 (Annex B, Petition for Review).

(a) the total amount of P1,983,858.32, claimed by petitioner as allegedly refundable input taxes was not properly documented since petitioner failed to show that it followed the existing regulations of the Bangko Sentral ng Pilipinas (BSP).

(b) the input taxes were not allegedly applied to output taxes were not properly substantiated.

5. In an action for tax refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund (Surigao Consolidated Mining Co. v. CIR, 9 SCRA 728 [1963]);

6. 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;

7. Well-entrenched in this jurisdiction that claims for tax refund are construed in *strictissimi juris* against the taxpayer as it is incumbent upon petitioner to show that it is entitled thereto under the law (CIR v. Tokyo Shipping Co., Ltd., 244 SCRA 332, 336 [1995]).

In support of its claim for refund, petitioner presented various documentary exhibits which consists of:

1. Certificate of Registration with the BIR (Exh. A);
2. VAT Ruling No. 080-89, dated April 3, 1989 (Exhs. B and B-1);
3. Quarterly VAT returns for the years 1995, 1996, and 1997 with some attachments of Monthly VAT Declarations (Exhs. C, D, E, F, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z);
4. Application for VAT refund/credit (Exhs. G, G-1, and H-1);
5. Certification issued by Punongbayan and Araullo with respect to petitioner's Schedule of Input Taxes Paid and Schedule of Zero-rated

Revenues for the period January 1, 1995 to December 31, 1995 (Exhs. I, and I-1 to I-3-5, inclusive);

6. Photocopies of supplier's sales invoices and/or official receipts for the subject period (Exhs. J-1 to J-963); and

7. Photocopies of transmittal letters, telex, advice, journal entry forms and bank credit vouchers for the year 1995 (Exhs. K-1 to K-502).

Counsel for the respondent, on the other hand, was constrained to submit the instant case for decision sans presentation of evidence due to the non pursuance of investigation by the RDO of Makati (see Minutes of the session, January 8, 1998, CTA records, p. 106). This case was eventually submitted for decision after both parties presented their respective memoranda.

The issues to be resolved are as follows:

1. Whether or not the petitioner is engaged in the sale of services that can qualify it as zero-rated, and if in the affirmative

2. Whether or not petitioner was able to comply with the provisions of Section 204 in relation with Section 230 of the Tax Code in filing a claim for refund; and

3. Whether or not petitioner was able to support its claim for refund with substantial evidence pursuant to Section 106(b) of the 1995 Tax Code.

Respondent avers that petitioner is not engaged in zero-rated sales of services as contemplated under Section 102(a)(2) of the Tax Code and thus, cannot legally claim refund of input taxes pursuant to Section 106(b) of the same Code. In his memorandum, respondent questions the corporate personality and nature of business of petitioner. He asseverates that petitioner is not merely a servicing unit of AMEX-Hongkong but is a regional headquarter of AMEX, USA, hence, petitioner is classified as a credit company engaged in financial service business in the Philippines. Respondent disputes the allegation of petitioner that it is engaged in the sale of services to AMEX-USA because records allegedly show that the former corporation does not have a personality of its own distinct from the latter and neither was it independently incorporated in the Philippines for the purpose of engaging in the sale of services. By putting forth this argument, respondent wants to show this Court that petitioner, contrary to allegations, is not engaged in the sale of services hence cannot claim refund of input VAT.

We would like to emphasize that We already have ruled in several cases, involving the same issues and parties, that petitioner's sales of services is subject to VAT at 0% pursuant to Section 102(a)(2) of the Tax Code **(see CTA Case No. 5031, promulgated on August 16, 1996; CTA Case No. 5139, promulgated on February 3, 1997, CTA Case No. 5209, promulgated on December 22, 19987; and CTA Case No. 5308, promulgated on December 29, 1997; all entitled American Express International, Inc., - Philippine Branch vs. Commissioner of Internal Revenue).** This zero-rating of petitioner was even confirmed by then Deputy Commissioner, Eufracio D. Santos, Office of the Commissioner, Kawanihan ng Rentas Internas, in VAT Ruling No. 080-89, dated April 3, 1989 (Exh. B), pertinent portions of which read as follows:

> "In reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly

> to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero-rated effective January 1, 1988, [Section 102(a)(2) of the Tax Code, as amended]. For this, there is no need to file an application for zero-rate. (Underlining supplied)

Despite the above decisions and VAT Ruling No. 080-89, respondent still raises the legal issue that petitioner is not engaged in zero-rated sale of services and further opines that the factual basis or representation upon which the ruling was issued is entirely distinct from the actual factual milieu of the present case.

We do not agree with respondent's disquisitions.

During the hearing held on June 4, 1997, petitioner's witness, Mr. Romel B. Paglinawan, Manager, Accounting, Planning and Administrative Services, testified on the nature of petitioner's business. He clarified that American Express International, Inc., Philippine Branch is a servicing company of AMEX-Hongkong whose function is to render services to American Express card members (TSN, June 4, 1997, pp. 6, 7, and 19). Respondent was then given an opportunity to cross examine the said witness regarding such issue, but he chose to remain silent.

We cannot deny a claim for refund simply on the strength of respondent's contentions which are baseless and gratuitous for not having presented any proof to support such statements. It should be stressed that a court's decisions are based on uncontrovertible evidence on record and not in good faith or speculation or unsupported assumption **(Philippine Associate Smelting and Refining Corp., Employee's Retirement Plan vs. Commissioner of Internal Revenue, CTA Case No. 4894,**

February 2, 1996). More so, We see no misrepresentation of facts stated in VAT Ruling No. 080-89.

Anent the second issue, We are convinced that petitioner was able to comply with the provisions of Section 204 of the Tax Code in relation with Section 230 of the same code in filing its claim for refund. The two-year judicial prescriptive period in claiming for refund of input VAT under the Tax Code is reckoned from the date of filing of the quarterly VAT return **(Hopewell Power [Philippines] Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5389, January 4, 1999).** It is clear from the record of the case that the claim for refund/credit of petitioner for the year 1995 was timely filed within two years from the dates of filing of petitioner's respective quarterly VAT returns considering that the application for refund/credit of input VAT with the BIR was filed on January 28, 1997 and the petition for review was filed on march 25, 1997, to wit:

Period Covered	Exh.	Date of Filing of Quarterly VAT Return
January to March 1995	C	April 20, 1995
April to June 1995	D	July 20, 1995
July to September 1995	E	October 20, 1995
October to December 1995	F	January 16, 1996

We now delve on the third issue at bar which is whether or not petitioner was able to present proofs to support the input taxes claimed.

After a careful perusal of all the evidence supporting the input taxes claimed by petitioner together with the Certification issued by Punongbayan & Araullo (Exhs. I to I-3-5, J-1 to J-963, and K-1 to K-502), the Court is inclined to grant petitioner's claim for refund in a reduced amount. This is due to further disallowance of input taxes in the amount of P302,254.61 because of the following reasons:

1. The input taxes were incorrectly recorded while some were recorded twice;

2. Some invoices or official receipts are not within the period covered by the claim;

3. The suppliers are non-VAT taxpayers;

4. Invoices are without BIR permit.

The records of the case also show that petitioner did not carry-over the input taxes for the year 1995, to the succeeding taxable years. This can be seen in petitioner's first quarter VAT return for the year 1997 wherein the total amount of P16,908,074.34, which included the amount of P1,983,122.81 claimed by petitioner, no longer appears in the 1997 second quarter VAT return (Exhs. V and W).

A re-computation of petitioner's valid input taxes revealed that only the sum of P1,571,492.36 is supported by evidence, to wit:

Quarter Involved	Amount claimed by Petitioner (Exhs. G & G-1)	Findings of Independent CPA (Exhs. I & I-2-1)	Allowable Refund
1st	P 599,787.53	P 562,130.19	P 562,130.19
2nd	647,479.88	575,025.88	575,025.88
3rd	357,796.57	452,095.89	357,796.57
4th	378,794.34	388,870.85	378,794.34
Total	P1,983,858.32	P1,978,122.81	P1,873,746.98
Less disallowances by the Court (see Annex A, for details)			302,254.62
AMOUNT REFUNDABLE			P1,571,492.36

WHEREFORE, finding the petition for review partially meritorious, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, **ISSUE** a TAX CREDIT CERTIFICATE in favor of petitioner the amount of P1,571,492.36.

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

AMERICAN EXPRESS INTERNATIONAL, INC. ANNEX A
SCHEDULE OF DISALLOWED INPUT TAXES
For the period January 01 - December 31, 1995

1ST QTR

SUPPLIER	DATE	EXHIBIT	COMPUTATION		AMOUNT	REMARK
Associated Medical &	2/24/95	J-6			93.69	Non-Vat
Clinical Services	2/24/96	J-7			72.08	Non-Vat
	3/24/95	J-8			59.57	Non-Vat
Cosmopolitan Office	1/10/95	J-30	Amt.	198.98		
& Supplies Mdse.			Shld. be	108.52	90.46	Erroneous Recording
D'Robe Security	3/31/95				7,451.32	No Document
Agency Inc.	3/15/95				6,499.15	No Document
	1/19/95	J-46	Amt.	966.82		
			Shld. be	958.03	8.79	Erroneous Recording
DELBROS	3/17/95				61.78	No Document
DHL	1/31/95	J-63	Amt.	11,688.25		
			Shld. be	11,571.37	116.88	Erroneous Recording
	3/9/95	J-64	Amt.	11,905.16		
			Shld. be	11,786.12	119.04	Erroneous Recording
ECOLINE	2/3/95	J-68			341.86	No BIR Permit
EIU Mills, Inc.	1/20/95	J-70	Amt.	11,210.28		
			Shld. be	11,098.19	112.09	Erroneous Recording
		J-71			9,800.00	1994 Invoice
Equitable Tech. Corp.	3/17/95	J-79			6,400.00	Recorded Twice
Hilarion-Levy Co. Inc.	2/15/95				143.64	No Document
Kimberly Clark	1/24/95	J-119	Amt.	212.95		
Phils.			Shld. be	198.98	13.97	Erroneous Recording
	2/24/95	J-121	Amt.	497.45		
			Shld. be	483.49	13.96	Erroneous Recording
KODAK Phils.					143.02	No Document
Professional	1/6/95	J-163			1,908.49	No BIR Permit
Courier	1/30/96	J-165			614.96	No BIR Permit
	2/16/95	J-164			701.56	No BIR Permit
	2/9/95	J-166			6.54	No BIR Permit
	3/6/95	J-167			690.86	No BIR Permit
	3/16/95	J-168			27.94	No BIR Permit
	3/16/95	J-169			23.19	No BIR Permit
	3/22/95	J-170			2,447.64	No BIR Permit
	3/30/95	J-171			749.13	No BIR Permit
	3/30/95	J-173			649.15	No BIR Permit

Steady Prints	3/11/95				466.00	No Document
UPS Phils. Inc.	3/30/95				494.52	No Document
	2/23/95	J-245	Amt.	120.11		
			Shld. be	112.27	7.84	Erroneous Recording
	2/23/95	J-247	Amt.	404.36		
			Shld. be	252.73	151.63	Erroneous Recording
	2/19/95	J-252	Amt.	198.45		
			Shld. be	191.81	6.64	Erroneous Recording
	3/17/95	J-254	Amt.	53.73		
			Shld. be	49.09	4.64	Erroneous Recording
	Subtotal			P	40,492.03	

2ND QTR

SUPPLIER	DATE	EXHIBIT	COMPUTATION		AMOUNT	REMARK
Associated Medical	4/21/95	J-262			72.73	Non-Vat
& Clinical Services	6/23/95	J-264			72.73	Non-Vat
Cardcraft Phils.	5/11/95	J-275	Amt.	606.00		
			Shld. be	540.00	66.00	Erroneous Recording
Hypercom Phils. Inc	5/10/95	J-316			136,718.18	Recorded twice
Lane Moving &	4/15/95	J-349			1,909.09	Recorded twice
Storage	5/24/95	J-343	Amt.	2,000.00		
			Shld. be	1,909.09	90.91	Erroneous Recording
Mode Matrix	5/15/95	J-358	Amt.	2,267.14		
			Shld. be	2,233.64	33.50	Erroneous Recording
	5/15/95	J-359	Amt.	3,487.91		
			Shld.be	3,436.36	51.55	Erroneus Recording
	5/25/95	J-362	Amt.	1,943.26		
			Shld. be	1,914.55	28.71	Erroneous Recording
	5/25/95	J-363	Amt.	2,267.14		
			Shld. be	2,233.64	33.50	Erroneous Recording
	5/19/95	J-361	Amt.	3,487.91		
			Shld. be	3,436.36	51.55	Erroneous Recording
Professional Couriers	4/6/95	J-380			472.07	No BIR Permit
	4/11/95	J-381			1,173.63	No BIR Permit
	4/27/95	J-382			1,475.66	No BIR Permit
	5/10/95	J-383			79.07	No BIR Permit
	5/17/95	J-384			1,983.40	No BIR Permit
	5/9/95	J-385			430.45	No BIR Permit
	6/8/95	J-386			716.43	No BIR Permit
	6/15/95	J-387			1,699.21	No BIR Permit

UPS	6/30/95	J-439	Amt.	24.64		
			Shld. be	23.18	1.46	Erroneous Recording
					36.75	No Document
	Subtotal				P 147,196.58	

3RD QTR

SUPPLIER	DATE	EXHIBIT	COMPUTATION		AMOUNT	REMARK
Associated Medical	9/15/95	J-449			72.07	Non-Vat
&Clinical Services	8/25/95	J-450			72.07	Non-Vat
	9/15/95	J-451			72.07	Non-Vat
D-Robe Security	9/19/95	J-514	Amt.	6,505.12		
			Shld. be	6,440.07	65.05	Erroneous Recording
KODAK Phils.	9/29/95				85.96	No Document
Lane Moving	9/11/95	J-555	Amt.	2,000.00		
			Shld. be	1,909.09	90.91	Erroneous Recording
Professional Couriers	8/2/95	J-604-608			2,512.47	Lacking in documents
	8/24/95	J-615			4,097.61	No BIR Permit
	7/25/95	J-617			36.27	No BIR Permit
	8/10/95	J-618			4,987.64	No BIR Permit
	8/14/95	J-619			36.27	No BIR Permit
Robbie Stylographics	7/17/95	J-647-648			3,654.55	Recorded twice
Serve Well Service & Supplies Corp.	7/19/95				545.23	No Document
UPS	7/28/95	J-708	Amt.	423.93		
			Shld. be	404.54	19.39	Erroneous Recording
	7/28/95	J-714	Amt.	235.31		
			Shld. be	223.18	12.03	Erroneous Recording
	7/28/95	J-718	Amt.	30.36		
			Shld. be	28.18	2.18	Erroneous Recording
	8/7/95	J-720	Amt.	160.53		
			Shld. be	153.64	6.89	Erroneous Recording
	Subtotal				P 16,368.66	

4TH QTR

SUPPLIER	DATE	EXHIBIT	COMPUTATION		AMOUNT	REMARK
Alliance Technologies	12/16/95				78,382.17	No Document
Associated Medical	11/17/95	J-731			72.73	Non-Vat
& Clinical Services	12/9/95	J-733			72.73	Non- Vat
AM Enriquez	10/10/95				16,537.00	No Document
DHL Phils.	11/27/95				9.09	No Document
	12/27/95				153.95	No Document
	10/24/95	J-783	Amt.	3,317.44		
			Shld. be	3,284.26	33.18	Erroneous Recording
	10/31/95	J-784	Amt.	9.10		
			Shld. be	9.00	0.10	Erroneous Recording
	10/24/95	J785	Amt.	3,374.62		
			Shld. be	3,340.87	33.75	Erroneous Recording
	11/29/95	J-786	Amt.	6,955.27		
			Shld. be	6,885.71	69.56	Erroneous Recording
	11/14/95	J-787	Amt.	36.40		
			Shld. be	36.03	0.37	Erroneous Recording
	12/27/95	J-788	Amt.	219.20		
			Shld. be	217.00	2.20	Erroneous Recording
	12/27/95	J-789	Amt.	79.53		
			Shld. be	78.73	0.80	Erroneous Recording
Don Bee Printing	10/5/95				178.64	No Document
Ecoline	10/19/95	J-805			129.00	No BIR Permit
GOP Advertising	12/11/95	J-815			1,068.18	Non-vat
Lane & Moving	11/21/95	J-841	Amt.	2,000.00		
Storage			Shld. be	1,909.09	90.91	Erroneous Recording
	11/21/95	J-844	Amt.	2,000.00		
			Shld. be	1,909.09	90.91	Erroneous Recording
	12/29/95	J-843	Amt.	2,000.00		
			Shld. be	1,909.09	90.91	Erroneous Recording
Prosperous Manpower	11/20/95	J-885-894	Amt.	6,045.86		
			Shld. be	4,981.80	1,064.06	Erroneous Recording
	10/26/95	J-897	Amt.	2,308.16		
			Shld. be	2,305.73	2.43	Erroneous Recording
Serve Well Services	10/21/95	J-932	Amt.	2,377.37		
			Shld. be	2,262.69	114.68	Erroneous Recording
	Subtotal			P	98,197.35	
	Totals			P	302,254.62	