REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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AT & T COMMUNICATIONS SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6034

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

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DECISION

***ACOSTA, E., P.J.*:**

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P4,844,562.57, 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 period January 1, 1998 to December 31, 1998.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at the 18th Floor, BA-Lepanto Building, 8747 Paseo de Roxas, Makati City. It is registered with the Securities and Exchange

Commission (SEC) engaged in the business of rendering various information, promotional, supportive, and liaison services in the communications and computer products field *(Exhibit A).* Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer with RDO Control No. 96-500-005004 dated November 29, 1996 *(Exhibits C & C-1).*

On April 28, 1997, petitioner entered into a Service Agreement with AT & T Communications Services International Inc. (AT & T-SI, for brevity), a corporation duly organized and existing under the laws of the State of Delaware, USA *(Exhibit B).* In the said Agreement, petitioner is bound to provide various information, promotional and liaison services to AT & T-SI. On the other hand, the latter is obliged to pay petitioner consideration in U.S. dollars for the services rendered. Likewise, petitioner rendered services to Mastercard International, Inc. *(Exhibit QQ)* for which it was paid for in foreign currency *(TSN, October 17, 2001, pages 6-14 and TSN, July 31, 2003, pages 9-18).*

For the calendar year 1998, petitioner filed its Quarterly Value-Added Tax Returns with the Bureau of Internal Revenue's collecting agent bank, Citibank N.A., Makati Branch. The returns reflect, among others, total zero-rated sales of services and unutilized input VAT on domestic purchases of goods/services in the amounts of P154,425,325.36 and P4,585,949.15, respectively, to wit:

Period	Exhibit	Date Filed	Zero-Rated Sales	Input VAT
1st Qtr. 1998	D,D-1,D-2	4/20/1998	P 48,495,804.56	P 2,073,164.47[1]
2nd Qtr. 1998	G,G-1,G-2	7/24/1998	29,900,485.64	760,877.16

[1] The amount is based on the final amended 1998 first Quarterly Value-added Tax Return *(Exhibit F).*

3rd Qtr. 1998	J,J-1,J-2	10/23/1998	27,291,667.18	641,372.50
4th Qtr. 1998	M,M-1,M-2	01/22/1999	48,737,367.98	1,369,148.44
T o t a l			P154,425,325.36	P 4,844,562.57

On March 29, 2000, petitioner filed with the Revenue District Office No. 50, Bureau of Internal Revenue, a written application for the refund of input taxes paid for the calendar year ended December 31, 1998 in the gross amount of P4,844,562.57 pursuant to the provisions of Section 112 of the 1997 Tax Code *(Exhibit P)*.

On March 30, 2000, petitioner instituted the present appeal with this Court in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code.

In his Answer, respondent raised 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 is 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).

To bolster its claim for refund, petitioner presented the following documentary evidence:

1. Certificates of Registration with the Securities and Exchange Commission and Bureau of Internal Revenue *(Exhibits A and C)*;

2. Service Agreement between AT & T Communications Services International Inc. and AT & T Communications Services Philippines, Inc. and the Assignment agreement between petitioner and AT & T Solutions Inc. *(Exhibits B, QQ and OOOO, inclusive of submarkings)*;

3. The original and the amended Quarterly Value-added Tax Returns for each of the four calendar quarters of taxable years 1998 and for the first quarter of taxable year 1999 *(Exhibits D to O, and NN to PP, inclusive of submarkings)*;

4. The administrative claim for refund *(Exhibit P)*;

5. Photocopy of Citibank's Credit Memos issued to petitioner acknowledging foreign currency remittances during the year 1998 *(Exhibits Q to Z, and AA to LL)*;

6. The reports of the commissioned independent CPA *(Exhibits MM, MM-1 and RRRR)*;

7. Photocopies of the VAT invoices and official receipts supporting petitioner's claimed input taxes for the year 1998 with Summary Lists of Input Taxes for the same period *(Exhibits PPPP-1a-a to PPPP-1a-231, PPPP-1b-1 to PPPP-1b-227, PPPP-2-1 to PPPP-2-177, PPPP-3-1 to PPPP-3-194, QQQQ-1-1 to QQQQ-1-207, QQQQ-2-1 to QQQQ-2-196, QQQQ-3-1 to QQQQ-3-176, RRRR-1-1 to RRRR-1-292, RRRR-2-1 to RRRR-2-222, RRRR-3-1 to RRRR-3-287, SSSS-1-1 to SSSS-1-170, SSSS-2-1 to SSSS-2-186, SSSS-3-1 to SSSS-3-298 and TTTT-1 to TTTT-1-24)*;

8. Summary of Zero-Rated Sales for the year 1998 *(Exhibit RR)*;

9. Petitioner's service invoices *(Exhibits SS to ZZ and AAA to PPP)*;

10. The original and amended Monthly VAT Returns for January, February, April, May, July, August, October and November 1998 *(Exhibits QQQ to ZZZ, and AAAA to NNNN, inclusive of submarkings).*

The Court admitted all of the aforementioned documents in a series of Resolutions dated April 4, 2001, January 16, 2002 and June 8, 2004 *(CTA records,* *pages 323, 349 and 554 to 555).* The case was submitted for decision on September 22, 2004, without the evidence[2] and memorandum of the respondent,[3]after he failed to present his evidence and memorandum when required by this Court.

The issues jointly stipulated by the parties are as follows:

> 1. Whether or not petitioner generated and recorded zero-rated sales in the amount of P154,425,325.36 for 1998;
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> 2. Whether or not petitioner paid VAT input taxes in the amount of P4,844,562.57 on its domestic purchases of taxable goods and services for the same period;
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> 3. Whether or not petitioner's claim for refund of unutilized input VAT for the period January 1, 1998 to December 31, 1998 is substantiated by documentary evidence; and
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> 4. Whether or not petitioner is entitled to a refund and/or issuance of a tax credit certificate in the amount of P4,844,562.57 representing its unutilized input VAT for 1998.

Petitioner anchors its claim for the refund of input taxes on Section 112(A) of the 1997 Tax Code in relation with Section 108(B)(2) of the same Code which provide:

> 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,

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[2] Respondent was considered to have waived his right to present evidence due to his failure for the second consecutive time to present his case *(CTA records, pages 327-328).*

[3] CTA records, page 584.

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.

SEC. 108. *Value-Added Tax on Sale of 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 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).

Based on 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) foreign currency exchange proceeds had been duly accounted for in accordance with the regulations of Bangko Sentral ng Pilipinas ***(AT & T Communications Services Philippines, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5764, May 29, 2001 with CTA Entry of Judgment dated August 31, 2001).***

A circumspect study of the records of the case together with the pleadings and evidence at hand, reveals that petitioner complied with the foregoing requisites.

Petitioner is a VAT-registered person as evidenced by the Certificate of Registration RDO Control No. 96-500-005004 issued by RDO No. 50 of the Bureau of Internal Revenue. The 1998 Quarterly Value-Added Tax Returns show that petitioner generated a total zero-rated sales of services in the amount of P154,425,325.36 as previously tabulated.[4] The administrative claim for refund which was filed on March 29, 2000, was seasonably filed within two years from the close of each calendar quarter of 1998. The input taxes claimed were attributable to zero-rated sales of services and were already deducted from the total available input taxes as of March 31, 1999 *(Exhibits PP, PP-1 and PP-2)*. Lastly, petitioner was able to prove that the foreign currency exchange proceeds in US dollars, representing inward remittances for management services, were credited to its Citibank Account No. 0/601563/029 as evidenced by various Citibank official computer generated advices *(Exhibits Q to Z and AA to LL)*.

However not all the input taxes sought to be refunded were supported by valid VAT invoices and official receipts. In the report dated January 3, 2000 of the commissioned independent CPA, Mr. Ruben R. Rubio, the input taxes in the amount of P23,051.74 were not properly substantiated for VAT purposes. In addition, input taxes on domestic purchases of services in the sum of P393,845.34, although supported by VAT official receipts, were dated outside of the period of the claim *(Exhibits MM and MM-1)*. In the testimony of Mr. Rubio, he opined that the latter input taxes needs further verification to find out whether there is double claiming *(TSN, October 26, 2000, pages 15-16)*.

After evaluating the aforesaid report submitted by Mr. Rubio, the Court finds the same to be in order and hereby adopts the said findings.

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[4] The authenticity and due execution of the Quarterly VAT Returns for the four (4) quarters of 1998 were jointly stipulated by the parties. The declared zero-rated sales were supported by invoices marked as Exhibits SS to ZZ and AAA to PPP.

In sum, petitioner is entitled to the refund of unutilized input VAT in a reduced amount of P4,427,665.49, computed as follows:

Total input VAT claimed per Petition for Review	P	4,844,562.57
Less: Exceptions made by the commissioned independent CPA		416,897.08
Amount of input VAT supported and verified	P	4,427,665.49

WHEREFORE, in view of the foregoing, the Petition for Review is hereby *PARTIALLY GRANTED*. Respondent is **ORDERED** to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** in the amount of P4,427,665.49 in favor of petitioner representing unutilized input VAT for the period January 1, 1998 to December 31, 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above 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.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice