REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION -
PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5470

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 16 1999

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DECISION

This is a petition for review seeking for the refund or issuance of a tax credit certificate in favor of petitioner Nichimen Corporation - Philippine Branch in the amount of P 100,182.66 representing excess input value-added tax payments on purchases of taxable goods and services for taxable year 1995.

The factual backdrop of the case are as follows:

Petitioner is a resident foreign corporation organized under the laws of Japan, with license to do business in the Philippines. It is primarily "engaged in the business of indenting, wholesaling, buying and selling lumber, abaca, sugar, mineral ores, machinery, steel products, cement and sundry goods in the Philippines; manufacturing and engineering activities; in the business of buying and selling of industrial materials, textiles, foodstuff to include oilseed, feeds, canned goods, etc., chemicals, steel products of ferrous and non-ferrous metal products and products allied to those mentioned above" (Exhibit "A"). On June 25, 1997,

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petitioner also filed with the Securities and Exchange Commission a petition requesting that its license be amended so as to reflect the expansion of its activity to include additional purposes, thus:

> "To engage in the business of purchase, acquisition, import and export, sale on wholesale basis and indenting of all kinds of merchandise or goods; to engage in the manufacturing activities; to engage in the business of commercial agency in the Philippines, and to acquire equities and invest as may from time to time be considered necessary." (Exh. A-1)

Petitioner is registered as a value-added tax entity and was issued VAT Registration Certificate No. 000-164-832-V on June 17, 1994 (Exhibit "C"). According to petitioner, its sales of services are subject to value-added tax at zero-rate (0%) provided for under Section 102(a)(2) [now (b)(2)] of the Tax Code, considering that its sales are paid for in acceptable foreign currency which are inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank.

In compliance with the VAT provisions of the Tax Code and its implementing rules and regulations, petitioner filed its value added tax returns for the quarters ending March 31, 1995 (Exhibit "D-2"), June 30, 1995 (Exhibit "E-2"), September 30, 1995 (Exhibit "F-2"), and December 31, 1995 (Exhibit "G-2"). These returns

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were all amended on March 3, 1997 showing a refundable amount totalling ₱100,182.66, broken down as follows:

Exh	1995		Refundable Input Tax
D	First Quarter		₱ 30,389.78
E	Second Quarter		20,573.13
F	Third Quarter		21,955.22
G	Fourth Quarter		27,264.53
		Total	₱100,182.66

On March 5, 1997, petitioner filed an application for tax credit/refund of the above-stated excess input value added tax paid for the year 1995. (Exhibit "H").

Respondent failed to act immediately upon said claim and so in order to forestall the running of the two-year prescriptive period provided by law, Petitioner filed the instant petition on March 19, 1997.

Respondent, in his Answer, claimed by way of Special and Affirmative Defenses that:

> "3. Assuming without admitting that petitioner filed with the Bureau of Internal Revenue an application for credit/refund of value-added tax on March 5, 1997, the same is subject to administrative investigation and resolution. Under Section 106 (e) of the NIRC, respondent has sixty (60) days from the date the application for refund was filed within which to refund input taxes. Hence, the filing of the instant petition is premature.
>
> 4. Petitioner has not presented before respondent sufficient evidence to prove that its sales of services are zero-rated for value-added tax purposes pursuant to Section 102 of the NIRC and that it has complied with the provisions of Section 106 of the NIRC."

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The sole issue to be resolved is whether or not Petitioner is entitled to the refund of input taxes on its purchases covering the period from January 1, 1995 to December 31, 1995 on the basis of the evidence presented.

The governing provisions on zero-rated sales and refunds of input taxes upon which Petitioner anchors its claim are quoted hereunder:

> "Sec. 102. ***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-rate.*-The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> > (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
> >
> > (2) Services other than those mentioned in the preceding sub-paragraph, 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)." (Underscoring supplied)
>
> xxx xxx xxx
>
> "Sec. 106. ***Refunds or tax credits of input tax.***-(a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the

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> 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: xxx"

Verily from the aforequoted provisions, petitioner is subject to value-added tax at 0% rate. In support of its claim, petitioner submitted photocopies of the invoices and receipts evidencing payments of the input taxes paid, as well as the statements from the Rizal Commercial Bank Corporation [an accredited agent bank of the Central Bank] to the effect that the acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

Respondent, on his part, alleged that he did not give due course to petitioner's claim for refund as the latter was uncooperative in submitting the required documents.

After an examination of the evidence presented by both parties, however, We find that the documents submitted by Petitioner have clearly substantiated its claim for refund. Moreover, We have already upheld Petitioner's privilege to claim a refund of excess input taxes paid in CTA Case Nos. 4431, 5159 and 5221, the facts of which are on all fours with the instant

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Petition, except for the periods and the amounts involved.

In view, however, of the fact that some purchases allegedly made by Petitioner were not supported by receipts evidencing the input taxes paid, We are reducing Petitioner's claim as follows:

Total amount of Input Taxes claimed			₱100,182.66
Less: Input Taxes not supported by receipts			
Supplier	Invoice Amount	VAT	
First Quarter			
K Line Air Service	₱ 1,390.60	₱ 139.06	
Constellation Auto Repair	1,020.00	102.00	
Topstitch Manila	8,727.20	872.80	
Second Quarter			
Makati Auto Center	850.50	85.05	
	575.50	57.50	1,256.91
Amount Refundable			₱ 98,925.75

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent to refund or issue the corresponding tax credit certificate to petitioner the reduced amount of ₱ 98,925.75 representing input taxes covering the period from January 1, 1995 to December 31, 1995.

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SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals

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