REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL TECHNOLOGY PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6039

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 17 2003

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DECISION

This case involves a claim for the issuance of a tax credit certificate in the amount of **Sixteen Million Nine Hundred Twenty Six Thousand Two Hundred Ninety Six and 84/100 Pesos (P 16,926,296.84)**, allegedly representing VAT input taxes paid by petitioner Intel Technology Philippines, Inc. during the period from January 01, 1998 to March 31, 1998.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at Gateway Business Park, Javalera, Gen. Trias, Cavite. It is engaged primarily in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or ICs. As such, it has registered itself with the Bureau of Internal Revenue as a value-added tax (VAT) entity, pursuant to Section 107 of the Tax Code effective January 30, 1996, as evidenced by the Certificate of Registration No. 96-540-000713 (*pars. 1 & 3, Joint Stipulation of Facts, CTA records, pp 47-48*). Being engaged in the aforesaid business, petitioner registered with the Philippine Economic Zone Authority (PEZA) as an export enterprise and was issued Certificate of Registration No. 95-133 by the said agency (*par. 4, Joint Stipulation of Facts, CTA records, p 48*).

For the period January 1, 1998 to March 31, 1998, petitioner filed its amended Quarterly Value Added Tax Return reflecting, among others, output VAT in the amount of P711.82, input VAT on domestic purchases in the amount of P16,927,008.66, and zero-rated sales of P2,296,346,207.44 (*Exhibit "I"*).

Petitioner alleges that the aforementioned zero-rated sales in the amount of P2,296,346,207.44 were paid for in acceptable foreign currency and inwardly remitted in accordance with existing regulations of the Central Bank of the Philippines pursuant to Sec. 106 (A)(2)(a)(1) of the Tax Code.

Claiming that its export sales are not subject to 10% value-added tax but are zero-rated, hence, will not result to any VAT output tax, petitioner filed, on May 18, 1999, a claim for tax credit of its input taxes for the first quarter of 1998 in the total amount of Php 16,926,296.84, with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, per BIR Form No. 2552, or "Application for Tax Credit/Refund of Value-Added Tax Paid" (*Exhibit "K"*) and Claimant Information Sheet No. 34589 *(Exhibit "J")*.

With the failure on the part of the respondent to act on the claim for refund, petitioner deemed it proper to file this Petition for Review on March 31, 2000 before it could be barred by prescription.

Respondent, in his Answer, specifically averred that:

1. Petitioner being allegedly registered with the Philippine Economic Zone Authority, is exempt from all taxes, including value-added tax, pursuant to Section 24 of Republic Act No. 7916 in relation to Section 103 of the Tax Code, as amended by RA 7716. Since its sales are not zero-rated but are exempt from VAT, petitioner is not entitled to refund of input tax pursuant to Section 4.103-1 of Revenue Regulations 7-95.

2. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

3. The amount of P 16,926,296.84 being claimed by petitioner as alleged VAT input taxes for the period 01 January 1998 to 31 March 1998 was not properly documented.

4. In an action for 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/credit.

5. Petitioner must show that it has complied with the provisions of Sections 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

6. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

The parties stipulated on the following issues to be resolved in this case, to wit:

1. Whether or not petitioner's sales are zero-rated or exempt from VAT.

2. Assuming that petitioner's sales are zero-rated, whether or not the VAT input taxes on domestic purchases of goods and services are attributable to its zero-rated sales.

3. Whether or not the petitioner is entitled for the credit or refund of the VAT input taxes in the amount of P 16,926,296.84 representing the alleged VAT input taxes on domestic purchases of goods and services for the period of January 1, 1998 to March 31, 1998.

Anent the first issue, petitioner argues that being a PEZA and VAT-registered entity engaged in export business which sales were paid for in acceptable foreign currency inwardly remitted to the Philippines in accordance with existing regulations of the BSP, its sales are not subject to 10% VAT but to 0% instead. It anchors its claim for refund on Sections 106(A)(2)(a)(1) and 108(8)(1), Title IV of the 1997 Tax Code, in relation to Section 112(A) of the same code, which provide:

SEC. 106. ***Value Added Tax on Sale of Goods or Properties.*** —

(A) x x x . . .
(1) . . .

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term '*export sales*' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods and services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

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Section 108. ***Value Added Tax on Sale of Services and Use or Lease of Properties. —***

(A) 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) 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).

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Section 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.

On the other hand, respondent argues that petitioner, being registered with the Philippine Economic Zone Authority as an Ecozone Export Enterprise, its business is not subject to VAT pursuant to Section 24 of Republic Act No. 7916 which provides:

> "**SEC. 24.** ***Exemption from Taxes Under the National Internal Revenue Code.*** — Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government x x x"

According to respondent, under the law, business establishments operating within the ECOZONE, such as petitioner, are exempt from national and local taxes. In lieu of paying taxes, said enterprises shall remit to the national government 5% of the gross income earned by them and this exemption includes the VAT. Citing Section 103 of the Tax Code, as amended by R.A. No. 7716, which provides in pertinent part:

> **Section 103.** ***Exempt Transactions.*** — The following shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491 and 1590, and non-electric cooperatives under Republic Act 6938 or international agreements to which the Philippines is a signatory.

respondent concludes that transactions of PEZA-registered enterprises, being exempt from internal revenue taxes under Section 24 of R.A. No. 7916, fall under the phrase "transactions which are exempt under special laws," thus, exempt from VAT. Consequently, since petitioner's business is exempt from VAT (output tax), it is not allowed any tax credit on VAT (input tax) previously paid pursuant to Section 4.103-1 of Revenue Regulations No. 7-95, which provides:

> **Section 4.103-1.** ***Exemptions.*** **–**
>
> (A) In general. – An exemption means that the sale or goods or properties and/or services and the use or lease or properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid xxx" (*Underscoring supplied*).

In a resolution promulgated on September 20, 2000 in the case of ***Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921***, this court passed upon the issue in this wise, thus:

> "However, We do not agree that the aforequoted law is applicable to the case at bar. Section 23 of Republic Act No. 7916 provides:
>
> > **Section 23. Fiscal Incentives.** — Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, **or** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."
>
> Under the aforementioned law, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, that which is provided for under Presidential Decree No. 66, as amended, and Section 24 of R.A. 7916 which includes the 5% preferential tax on gross income earned, which is in lieu of national and local taxes and second, as that provided for under Book VI of Executive Order No. 226, including but not limited to an income

tax holiday (ITH) of 4 to 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise opted for the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax. These were explicitly elucidated by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99.

The records of the case convince Us that Petitioner availed of the fiscal incentives under Executive Order No. 226 because of the fact that Petitioner is a VAT registered entity with Certificate of Registration RDO Control No. 97-083-000600-V duly issued by Respondent's Assistant Revenue District Officer, Ms. Gloria D. Decierdo, for and in behalf of Mr. Nieto A. Racho, Revenue District Officer, RDO No. 83, Dalisay, Cebu (Exh. B)."

Moreover, in the case of ***Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 6102, promulgated on July 4, 2001***, which was later on affirmed by the Court of Appeals in the case of ***Commissioner of Internal Revenue vs. Seagate Technology (Philippines), CA-G.R. SP No. 65797, promulgated on September 5, 2002***, the court ruled that:

"We agree with the contention of Respondent that if an entity is registered with PEZA as an ecozone enterprise and remitting 5% of its gross income to the national government, it is exempt from the payment of VAT. However, We do not agree that the aforequoted provisos are applicable to the case at bar. First, the records show that ***Petitioner is a VAT registered entity*** with Certificate of Registration RDO Control No. 97-083-0000600-V issued by the Revenue District Office No. 83 of the Bureau of Internal Revenue. ***Therefore, contrary to Respondent's allegation, Petitioner is evidently subject to value-added tax***. Second, section 103 (q) of the Tax Code, as amended, specifically excepted, among

> others transactions under Presidential Decree No. 66 (now R.A. 7916), from transactions which are exempt from the VAT under special laws. Hence ***Petitioner, being registered with the PEZA under the provisions of Presidential Decree No. 7916, is not exempt from the payment of the value-added tax*** (see Resolution, Seagate Technology (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5921, September 20, 2000). Third, Petitioner never remitted 5% final tax to the government because it was not able to commence its commercial operations in the Philippines." (*Emphasis supplied*)

Likewise, the Court of Appeals affirmed this court in the cases of ***Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc., CA-G.R. No. 59872, October 13, 2003, Commissioner of Internal Revenue vs. EG &G OMNI, Inc., CA-G.R. SP No. 61402, September 24, 2002 and Commissioner of Internal Revenue vs. KSS Philippines, Inc., CA-G.R. SP No. 66720, March 19, 2002.***

Therefore, from the foregoing, petitioner is legally entitled to claim for the issuance of a tax credit certificate of its unutilized VAT input taxes on its domestic purchases of goods and services attributable to its zero-rated sales.

We now proceed to the substantiation requirements.

After a painstaking scrutiny of the documents presented as evidence by herein petitioner, which included its export sales invoices (*Exhibits "Z-1" to "Z-210"*), this court found that all of the said invoices presented do not have any BIR Permit to Print. and some of these invoices do not even have the Taxpayer's Identification Number-VAT (TIN-V) [*Exhibits Z-9, Z-11, Z-14, Z-16, Z-26, Z-28, Z-33, Z-42, Z-44, Z-54, Z-56, Z-62, Z-64, Z-73, Z-75, Z-81, Z-90, Z-92, Z-94, Z-100, Z-102, Z-104, Z-113, Z-115, Z-117, Z-*

121, Z-123, Z-125, Z-203, Z-205 and Z-207], in blatant violation of Section 113 of the 1997 Tax Code, in relation to Section 238 of the same Code, which provide:

> **SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons. -***
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
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> 1. A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN)
>
> **SEC. 238.** ***Printing of Receipts or Sales or Commercial Invoices.*** - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
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> xxx xxx xxx

Likewise, Section 4.108-1 of Revenue Regulations No. 7-95 provides:

> **SEC. 4.108-1.** ***Invoicing Requirements.*** - All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered **receipts or sales or commercial invoices** which **must show**:
>
> 1. the name, TIN, and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of

merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales, and;
6. the invoice value or consideration.

xxx xxx

Moreover, it is the responsibility of a taxpayer seeking for a refund to comply with Section 2(c)(1)(2)(4) of Revenue Regulations No. 3-88, which provides:

Section 2. *Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:*

Section 16. Refunds or tax credits of input tax.-

(c) *Claims for Tax Credits/Refunds.* — Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of the business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

1. Export Sales

i) photocopy of export document showing the amount of export document, and the date and destination of the goods exported. With respect to the foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.

ii) statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

Finally, in this court's resolution in the case of ***Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6169, September 2, 2003***, we emphasized the importance of a valid sales invoice as a requirement before a claim for refund may be granted, to wit:

> "As regards the contention of petitioner that its export sales can still be proven by its presentation of other documents such as the certification of inward remittances, export declarations and airway bills, we do not agree. In the case of *The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, promulgated on February 19, 2001*, it was ruled that the best means to prove the exportation of goods are the said export documents and the commercial invoices or receipts, taken collectively.
>
> xxx xxx xxx
>
> We do not subscribe to petitioner's view that the compliance requirement under the Tax Code finds relevance only with respect to domestic or local sales. The provisions of law regarding invoicing requirements, specifically Section 113 in relation to Section 237 of the 1997 Tax Code as well as Section 4.108-1 of Revenue Regulations No. 7-95 did not make any distinction as whether the sale is export or domestic."

And, in the case of ***Intel Technology Philippines, Inc. vs Commissioner of Internal Revenue, CTA Case No. 6128, promulgated on September 1, 2003***, this court, through a resolution, held that:

> "The absence of BIR permit to print and the Taxpayer's Identification Number-VAT (TIN-V) in the export sales invoices is fatal to petitioner's claim for refund because it violates the provisions of Section 113 in relation to Section 237 of the Tax Code which provides, thus:
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> xxx xxx xxx
>
> The requirements provided in the foregoing provisions are clear and absolute. It is incorrect for the petitioner to state that the compliance requirements under the Tax Code finds relevance only with respect to domestic or local sales, because the requirements in the above-mentioned provisions on the issuance of VAT invoices do not distinguish whether the sale is export or domestic. When the law does not provide a limitation, no limitation should be read into it (Cordero vs CFI of Laguna, 67 Phil 358).

Verily from all the foregoing, for failure of the petitioner to comply with the requirements set forth under Sections 113 and 238 of the 1997 Tax Code and the applicable revenue regulations, this petition must necessarily fail.

IN VIEW OF THE FOREGOING, petitioner's claim for issuance of a tax credit certificate in the amount of P16,926,296.84 is hereby **DENIED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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