REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

TAKENAKA CORPORATION PHILIPPINES BRANCH,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6654

Members:

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

Promulgated:
SEP 07 2005
[signature]

x -x

DECISION

BAUTISTA, L., J.:

This instant case seeks for the refund or issuance of a tax credit certificate in the total amount of Sixty Four Million Eight Hundred Twenty-Six Thousand One Hundred Thirty One Pesos and 22/100 (Php64,826,131.22), allegedly representing petitioner's unutilized and unapplied input value-added taxes it paid on domestic purchases of goods and services directly attributable to its zero-rated sales for the second quarter of taxable year 2001.

The facts as borne by the records of the case are as follows:

Petitioner is a foreign corporation duly organized and existing under the laws of Japan, duly licensed to transact business in the Philippines through its branch

283

office located at Andrews Avenue, Villamor Airbase, Pasay City. It is registered with the Bureau of Internal Revenue as a value-added tax (VAT) taxpayer as evidenced by its Certificate of Registration bearing Taxpayer Identification No. 005-301-571-000.

For purposes of constructing the Ninoy Aquino International Airport Passenger Terminal III, petitioner, as a sub-contractor, entered into an On-shore Construction Contract with the Philippine International Air Terminals Co., Inc. (PIATCO).

PIATCO is a corporation duly organized and existing under the laws of the Republic of the Philippines and duly-registered with the Philippine Economic Zone ("PEZA") as an Ecozone Developer/Operator as evidenced by its Certificate of Registration No. EZ-98-01 issued pursuant to Republic Act No. 7916 (An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration and Coordination of Special Economic Zone in the Philippines Creating for this Purpose the Philippine Economic Zone Authority and for Other Purpose).

For the 2nd Quarter of the taxable year 2001, petitioner filed its Quarterly Value-Added Tax Return on July 25, 2001, declaring VAT input tax in the amount of Php110,121,385.68 arising from its domestic purchases of goods and/or services which is composed of input tax carried over from previous quarter in the amount of Php47,227,401.96 and input tax on domestic purchases for the said quarter in the amount of Php62,893,983.72 which were not applied against any output tax.

Subsequently, on November 29, 2001, petitioner filed its Amended Quarterly Value-Added Tax Return for the second Quarter of the year 2001. It amended the total input tax during the second quarter of taxable year 2001 reducing it to only Php109,550,914.38 consisting of input taxes carried over from the previous quarter

284

in the amount of Php48,953,903.72 and input tax on domestic purchases for the quarter in the amount of Php60,597,010.66 which again was not applied against any output tax.

On September 10, 2002, petitioner filed its 2nd Amended Quarterly VAT Return for the second quarter of taxable year 2001 by increasing the total input tax for the second quarter to Php111,773,378.07 consisting of input taxes carried over from previous quarter in the amount of Php52,240,921.72 and input tax on domestic purchases for the quarter in the amount of Php59,532,456.35, which was not applied against any output tax.

On November 5, 2002, petitioner filed its Application for Tax Credits/Refunds (BIR Form No. 1914) before the BIR Revenue District Office No. 51 (Pasay City) for the second quarter of taxable year 2001.

Petitioner, through its external auditor SGV & Co., filed a formal letter addressed to the BIR Revenue District Office No. 51 (Pasay City) dated October 24, 2002 on November 5, 2002 which signified that it has filed the complete documents in support of its administrative claim for refund or the application for issuance of TCC.

To suspend the running of the two (2)-year prescriptive period within which a claim for refund may be filed as allowed by law, petitioner filed the instant Petition for Review with this Court on April 11, 2003 praying for the refund/tax credit of the amount of P59,532,456.35.

On July 14, 2003, petitioner filed its 3rd Amended Quarterly VAT Return for the second quarter of taxable year 2001 by reducing its total input tax for the second quarter to only Php64,826,131.22 consisting of input tax on domestic

285

purchases for the same quarter, which was not applied against any output tax. Thus, on July 24, 2003, petitioner filed an Amended Application for Tax Credits/Refunds (BIR Form No. 1914) before the BIR Revenue District Office No. 51 (Pasay City) for the second quarter of taxable year 2001 and an Amended Petition for Review with this Court increasing the amount claimed to P64,826,131.22.

On June 18, 2003, respondent filed his Answer raising the following Special and Affirmative Defenses:

5. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;

6. Petitioner's claim for refund/tax credit in the amount of P59,532,456.35 representing petitioner's alleged unutilized and unapplied input VAT for the second quarter of taxable year 2001 were not fully substantiated;

7. Petitioner's sale of goods and services in favor of PIATCO is not subject to VAT at zero percent rate under Section 108(B)(2) of the 1997 Tax Code;

8. 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;

9. Claims for refund are strictly construed against the claimant for the same partakes of 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 Mindoro Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)**;

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

11. 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.

On July 1, 2005, this case was submitted for Decision sans respondent's Memorandum.

286

As jointly stipulated by the parties, the issues this Court is tasked to resolve are:

1. Whether or not petitioner's unutilized input tax for the second quarter for taxable quarter 2001 in the amount of P64,826,131.22 has been duly substantiated by documents so as to be entitled to its claim for refund or the issuance of a tax credit certificate;

2. Whether or not petitioner's entire domestic purchases of goods, from which its alleged unutilized input VAT was derived from, were exclusively used for the construction of NAIA-IPT3 Project; and

3. Whether or not Petitioner's input tax for the second quarter of taxable year 2001 amounting to P64,826,131.22 has remained unapplied against any output tax liability in the succeeding quarters of 2001.

Petitioner anchors its claim on the provisions of Section 108(B)(3) in relation to Sections 110(B) and 112(A) of the 1997 National Internal Revenue Code, Section 3 of Revenue Memorandum Circular No. 74-99 and VAT Review Committee Ruling No. 011-2003 dated January 13, 2003 issued in its favor, all quoted below for easy reference:

SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —

(A) x x x
(B) *Transactions Subject to Zero Percent (0%) Rate. —*
(1) x x x
(2) x x x
(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate.

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:

287

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 sales 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.

REVENUE MEMORANDUM CIRCULAR NO. 74-99

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.

VAT COMMITTEE RULING NO. 11-2003, January 13, 2003

"Therefore, sale of goods and services rendered by Takenaka to PIATCO are subject to the zero percent (0%) VAT and requires no prior approval for zero rating based on RMC 74-99. Accordingly, Takenaka is entitled to refund or the issuance of a tax credit certificate (TCC) covering all its accumulated VAT input taxes in relation to its services rendered to PIATCO and from its purchase of goods and services from duly registered VAT taxpayers, duly supported by a VAT invoice or official receipt conforming with the requirements of Section 113 and 237 of the Tax Code of 1997; provided that the application for refund or issuance of a Tax Credit Certificate (TCC) is made within two years after the close of the taxable quarter when the sales were made."

From the foregoing, services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subject the supply of such services to zero percent (0%) rate. Thus, petitioner's sale of services to PIATCO, a PEZA registered entity (evidenced by the

288

Philippine Economic Zone Authority (PEZA) Certificate of Registration No. EZ-98-01), is subject to VAT at zero percent without a need of prior application for zero-rating.

A verification of the evidence on record shows that petitioner's declared zero-rated sales/receipts, in the amount of P1,069,882,573.11 reflected in its Quarterly Value-Added Tax Return for the 2nd quarter of 2001 *(Exhibits H & H-8)*, represent service fees paid by PIATCO. The petitioner's VAT Invoices and/or official receipts *(Exhibits S, S-1-1 to S-9-164)* supported said fees. Therefore, petitioner can claim for the refund of input taxes attributable thereto. However, petitioner must still prove its claimed unapplied input taxes in the total amount of P64,826,131.22 by valid VAT invoices and official receipts.

After a careful evaluation and verification of the exhibits presented, this Court agrees with the findings of the commissioned Independent CPA disallowing P9,696,644.65 of the input taxes claimed *(Exhibit O)*, detailed as follows:

Item	**Nature**	**Exhibit Reference**	**Amount**
1.	Input VAT on purchases of goods not claimed in the same quarter when the supporting VAT invoices are dated.	P-3-a, p. 2	P 52,510.14
2.	Input VAT on purchases of services not claimed in the same quarter when the supporting VAT ORs are dated.	P-3-a, p. 18	4,654.21
3.	Input VAT on purchases of goods supported by invoices printed after January 1, 1996 marked with the suppliers' "TIN V" and not "TIN VAT"	P-3-a, p. 4	9.09
4.	Input VAT on purchases of services supported by ORs printed before January 1, 1996 marked with the suppliers' "TIN V" and not "TIN VAT"	P-3-a, p. 20	672,175.52
5.	Input VAT on purchases of services supported by Ors preprinted with the suppliers' "TIN and VAT No." and not "TIN VAT"	P-3-a, p. 26	2,439,821.57
6.	Input VAT on purchases of services supported by certified true copy of VAT Ors	P-3-a, p. 19	275,748.93
	SUBTOTAL (A)		**P3,444,919.46**

789

Item	Nature	Exhibit Reference	Amount
1.	Input VAT on purchases of goods not claimed in the same quarter when the supporting VAT invoices are dated	P-3-a, p. 3	P 98,628.75
2.	Input VAT on purchases of goods supported by invoices without "BIR permit to print"	P-3-a, p. 1	10,500.00
3.	Input VAT on purchases of goods supported by VAT invoices issued not in the Company's name or without the Company's name as payor	P-3-a, p. 5	1,484.82
4.	Input VAT on purchases of goods supported by documents other than invoices (i.e., ORs, cash register tapes, cash receipts, provisional receipt, supermarket receipt, guest check, etc.)	P-3-a, p. 6	7,760.31
5.	Overclaimed Input VAT on purchase of goods due to erroneous computation	P-3-a, p. 8	295,017.34
6.	Input VAT on purchases of goods without supporting documents	P-3-a, p. 7	7,650.69
7.	Input VAT on purchases of services supported by ORs without "BIR permit to print	P-3-a, p. 17	334.50
8.	Purchases of goods paid in foreign currency duly supported by VAT invoices but input VAT was erroneously computed or the foreign exchange rate used does not tally with the prevailing interbank reference rate (IRR)	P-3-a, p. 16	151,019.52
9.	Input VAT on purchases of services supported by VAT ORs issued not in the Company's name or without the Company's name as payor	P-3-a, p. 21	12,957.07
10.	Overclaimed Input VAT on purchase of services due to erroneous computation	P-3-a, p. 27	681.82
11.	Input VAT on purchases of services without supporting documents	P-3-a, p. 25	362,871.36
12.	Input VAT on purchases of services supported by documents other than ORs (i.e., invoices, cash register tapes, statement of account, express bill payment receipt, guest check, Republic of the Phil. (ROP) OR, etc.)	P-3-a, p. 24	179,649.15
13.	Input VAT claimed on application of advance payments or deposits without supporting documents presented for our review and/or input VAT on contra charges by suppliers of services claimed as input VAT credit without VAT Ors	P-3-a, p. 30	4,661,561.36
14.	Input VAT on purchases of services or importation supported by photocopies of Bureau of Customs' ORs and without Import Entry Revenue Declaration form	P-3-a, p. 22	465,812.00
15.	Purchases of services paid in foreign currency duly supported by VAT ORs but input VAT was erroneously computed or the foreign exchange rate used does not tally with the prevailing interbank reference rate (IRR)	P-3-a, p. 28	3,553.75
	SUBTOTAL (B)		**P6,259,482.44**
	Input VAT on purchases of goods and services already deducted by the Company from the amount of its claim	P-2-b	(7,757.14)
	Unaccounted Difference	P-2-b	(.11)

240

Item	Nature	Exhibit Reference	Amount
	SUBTOTAL (C)		**P6,251,725.19**
	TOTAL (A+C)		**P9,696,644.65**

Records disclose that the input taxes claimed for the 2nd quarter of 2001 in the gross amount of P64,826,131.22 were not applied by petitioner against its output VAT liability as of the 3rd quarter of 2001 as they were already deducted by petitioner from the total available input VAT for the succeeding quarters as evidenced by its Quarterly Value-Added Tax Return for the 3rd quarter of 2001 *(Exhibits I & I-3).*

In addition, petitioner filed its Quarterly VAT Return for the second quarter of taxable year 2001 on July 25, 2001, with the corresponding amendments thereto on November 29, 2001, September 10, 2002, and July 14, 2003 respectively. Hence, the filing of this Petition for Review on April 11, 2003 and the Amended Petition for Review on July 24, 2003 is within the two-year prescriptive period.

IN VIEW OF THE FOREGOING, petitioner's claim for refund and/or issuance of a tax credit certificate is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of Php55,129,486.57, representing unapplied or unutilized input taxes for the second quarter of taxable year 2001, computed as follows:

Input taxes claimed	P64,826,131.22
Less: Disallowance per Independent CPA Findings	9,696,644.65
TOTAL	P55,129,486.57

291

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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

292