REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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AICHI FORGING COMPANY OF ASIA, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7187

Members:

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

Promulgated:
AUG 13 2007, 10:00AM

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DECISION

BAUTISTA, J.:

This instant case seeks the refund of the total amount of **FIVE MILLION FIFTY SEVEN THOUSAND ONE HUNDRED TWENTY AND 95/100 (P5,057,120.95)**, allegedly representing petitioner's input value-added taxes (VAT) paid on its domestic purchases of goods (including capital goods) and services, and importation of goods other than capital goods covering the taxable period from January 1, 2003 to March 31, 2003.

Petitioner Aichi Forging Company is a corporation duly organized and existing under the laws of the Republic of the Philippines, engaged primarily in the business of manufacturing, producing and processing all kinds of steel and steel by-products, more particularly, but not limited to, closed impression die steel forging and all other automotive steel parts. It is duly registered with the Bureau of Internal Revenue (BIR) as a value-added tax entity on May 19, 1995, covered under Certificate of Registration RDO Control No. 95-570-000481 and OCN 1RC0000148499.[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including, *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected or of VAT input taxes attributable to zero-rated revenue.

Petitioner duly filed its Quarterly Value-Added Tax Return for the first quarter of the year 2003 on April 25, 2003, as well as its Monthly Declaration for the same quarter of the same year.

On March 29, 2005, petitioner filed with the BIR Revenue District Office No. 057 its Application for Tax Credit/Refunds for the first quarter of 2003 in the amount of P5,057,120.95, allegedly representing input value added taxes it paid on its purchases of goods, services, and capital goods, and on its importation of goods and capital goods, all attributable to its zero-rated sales in the total amount of P149,174,477.94.

Without any favorable response from the BIR and to toll the running of the two (2)-year prescriptive period within which a claim for refund may be filed as allowed by law, petitioner elevated this instant Petition for Review with this Court on March 31, 2005.

On April 25, 2005, respondent filed his Motion for Extension of Time to File Answer, which was granted by this Court in an Order dated May 5, 2005, giving respondent a period of fifteen (15) days to file his Answer.

Within the period granted, respondent filed his Answer on May 9, 2005, raising the following as his Special and Affirmative Defenses, to wit:

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[1] Paragraphs 1 and 2, Joint Stipulation of Facts and Simplification of Issues, *Rollo*, page 107

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

5. The amount of P5,057,120.95 being claimed by petitioner as alleged overpaid VAT input taxes for the period January 1, 2003 to March 31, 2003 was not properly documented;

6. 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;

7. 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;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

On April 11, 2007, this case was submitted to Decision, after the submission of the parties' Memoranda.

The Court is tasked to resolve the following issues:[2]

"a.) Whether or not Petitioner generated and recorded export sales in the amount of P149,174,477.94 for the period January 1, 2003 to March 31, 2003;

b.) Whether or not Petitioner's export sales for the period March 1, 2003 to March 31, 2003 were paid for in acceptable foreign currency and was inwardly remitted to the Philippines in accordance with the regulations of the Central Bank of the Philippines.

c.) Whether or not Petitioner incurred domestic purchases of taxable goods and services and capital goods and importation of goods and capital goods in the amount of PhP53,538,963.18 for the period January 1, 2003 to March 31, 2003.

d.) Whether or not the above purchases and importation were paid by Petitioner in the course of trade and business and are duly supported by invoices and/or receipts showing the information required by law.

e.) Whether or not Petitioner is entitled for the credit/refund of the tax arising from domestic purchases of taxable goods and services and capital goods and importation of goods and capital goods from January 1, 2003 to March 31, 2003 in the amount of PhP5,057,120.95 subject of this Petition.

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[2] Joint Stipulation of Facts and Simplification of Issues, *Rollo*, pages 109-110

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f.) Whether petitioner's claim was filed within the two-year prescriptive period."

Petitioner maintains that being a VAT-registered entity, its direct and indirect export sales of goods and services, as well as, its importations of goods and capital goods, are subject to VAT at zero percent (0%) rate. Petitioner relies on Sections 106(A)(2)(a)(1), (2), and (3) and 108(B)(1) of the National Internal Revenue Code (NIRC) of 1997 for its entitlement to VAT at zero-percent (0%) rate. It argues that pursuant to the aforementioned provisions of law, particularly Section 106, such zero-rated sales will not result in any VAT output tax. Petitioner likewise submits that Revenue Memorandum Circular No. 74-99 categorically declares that all sale of goods, properties and services made by a VAT-registered supplier from the Customs territory to an ECOZONE enterprise shall be subject to VAT at zero-percent (0%) rate, regardless of the latter's type or class of PEZA registration.

This Court resolves to partially grant petitioner's claim for refund.

In its VAT return for the first quarter of 2003, petitioner reported the amount of P148,695,764.73[3] as its zero-rated sales. Upon verification, and as correctly reported[4] by the Court-Commissioned Independent CPA, Ms. Maria Wencita C. Salvador, petitioner's zero-rated sales for the year 2003 amounted to P149,176,175.59, with breakdown as follows:

	January	February	March	Total
Direct Export Sales				
Yamaha Motor Asia, Pte. Ltd.		P 100,717.22		P **100,717.22**
Indirect Export Sales to PEZA Entities				
Aichi Steel Corporation	-	309,559.14	P 70,134.50	379,693.64
Asian Transmission Corp.	P 28,263,056.46	26,605,507.72	28,644,467.98	83,513,032.16
Isuzu Autoparts Mfg. Corp.	6,541,247.78	2,892,517.12	6,428,500.77	15,862,265.67
Kito Phils., Inc.	-	69,458.90	115,514.70	184,973.60
Laguna Autoparts Mfg. Corp.	578,340.00	571,200.00	585,480.00	1,735,020.00
Toyota Autoparts Phils., Corp.	12,797,570.17	14,971,890.54	19,631,012.59	47,400,473.30
Sub-Total	**P 48,180,214.41**	**P45,420,133.42**	**P55,475,110.54**	**P149,075,458.37**
Grand Total	**P 48,180,214.41**	**P45,520,850.64**	**P55,475,110.54**	**P149,176,175.59**

[3] Exhibit "D-3"
[4] Exhibit "Q"

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Pursuant to Sections 106(A)(2)(a)(1) of the NIRC of 1997, as amended, direct export sales are subject to VAT at zero percent (0%) rate. For easy reference:

"**SEC.106.** ***Value-added Tax on Sale of Goods or Properties.—***

(A) Rate and Base of Tax. — x x x

xxx xxx xxx

(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 or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas (BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production."

"**SEC. 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);

xxx xxx xxx"

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However, a close scrutiny of the documents offered in evidence by petitioner to prove its export sales reveals that petitioner failed to substantiate its alleged export sales in the amount of P100,717.22. Petitioner neglected to submit to this Court the required documents, such as, sales invoices, bills of lading/airway bills, export declarations, and proof of receipt of the foreign currency payments for such export sales. Wanting these documents to substantiate petitioner's direct export sales leaves the Court no other recourse but to deny petitioner's claim for VAT zero-rating for the said amount.

As regards petitioner claim for the zero-rating of its indirect export sales in the amount of P149,075,458.37, Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, applies, thus:

> **"SEC.106. Value-Added Tax on Sale of Goods or Properties.—**
>
> (A) Rate and Base of Tax. — x x x
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* —The term 'export sales' means:
>
> xxx xx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

In relation thereto, Section 3(2)(a) and (3) of Revenue Memorandum Circular No. 74-99, reads:

> **"SECTION 3. *Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.—***
>
> xxx xxx xxx
>
> (2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

> **(a)** ***Sale of goods (i.e., merchandise).*** **— This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec.106(A)(2)(a)(5)**, NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.
>
> 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 Sec. 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.
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> This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular." (*Emphasis supplied*)

This very same Revenue Memorandum Circular effectively dispensed with the requirement of a prior application for zero-rating. Thus, petitioner's sales to PEZA registered companies in the amount of P149,075,458.37, which are duly covered by sales invoices[5], likewise qualify for VAT zero rating. Consequently, petitioner is not liable to pay any output VAT thereon and the reported unutilized input VAT attributable thereto may be the proper subject of a claim for refund/tax credit certificate pursuant to Section 112(A) of the NIRC of 1997, as amended, in relation to Section 4.108-1 of Revenue Regulations No. 7-95 which enumerates the information which must appear on the face of the receipts or invoices issued by VAT-registered entities, to wit:

[5] Exhibits "JJ to JJ-370," "KK to KK-329" and "LL-LL-432"

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"**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 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."

"**SECTION 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."

Inasmuch as this Court had discussed petitioner's export sales as qualified for VAT at zero-rating, at this point, it is essential to discuss the substantiation issue on the claimed input VAT payment of P5,057,120.95. In the report of the Court-commissioned Independent CPA dated February 24, 2006,[6] and as verified by this Court, found that out of the total claimed input VAT of P5,057,120.95, only the amount of P5,022,948.50 was duly substantiated and that the amount of P34,172.45 should be disallowed from petitioner's claim due to the following reasons:

[6] Exhibit "Q"

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Findings	Amount
Amount not in agreement with the documents	P4,945.46
Name of the payee not indicated-local purchases	1,821.78
Outside the period covered	22,550.56
Unreconciled discrepancy between the schedules and returns	4,854.65
Total exceptions noted during the examination of source documents	**P34,172.45**

Further, upon this Court's examination of the documents presented, the input VAT used in computing the input VAT available for refund was not reduced by the amount of output VAT for sales subject to VAT in the amount of P884,550.93. The said amount was declared in petitioner's First Quarterly VAT Return[7] for the year 2003 as output tax due, but was never deducted from petitioner's claim. Thus, the amount of P884,550.93 should likewise be deducted from its substantiated input VAT of P5,022,948.50 (P5,057,120.95 - P34,172.45), thereby leaving a refundable excess input VAT of P4,138,397.57, all attributable to petitioner's zero-rated sales.

This Court notes that petitioner carried over the claimed unutilized input VAT for the first quarter of 2003 to the succeeding taxable quarters until the first quarter of the taxable year 2005[8]. However, upon closer scrutiny, this Court finds that the same amount was deducted as "Any VAT Refund/TCC" from the total available input tax in the amount of P27,438,972.69 for first quarter of the taxable year 2005. In other words, although the amount was initially carried over to the succeeding quarters, the subject claim no longer formed part of the excess input VAT for the year 2005.

Lastly, as regards the issue of whether or not petitioner's administrative and judicial claims for refund were filed within the two-year prescriptive period, this Court resolves the same in the affirmative. The reckoning of the two-year prescriptive period for the filing of claim for VAT refund starts from the date of filing of the corresponding quarterly VAT return.

[7] Exhibit "D"
[8] Exhibits "F," "H," "J," "K," "L," "M," "N", and "O"

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In the present case, the claim covers the first quarter of 2003 for which petitioner filed its VAT return on April 25, 2003[9]. Counting from this date, petitioner had until April 24, 2005[10] within which to file both its claims. Hence, petitioner having filed its administrative claim for refund on March 29, 2005[11] and its Petition for Review on March 31, 2005, both claims clearly fall within the two-year prescriptive period.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** in the reduced amount of **FOUR MILLION ONE HUNDRED THIRTY EIGHT THOUSAND THREE HUNDRED NINETY SEVEN AND 57/100 PESOS** (**P4,138,397.57**), representing petitioner's input value-added taxes paid on its domestic purchases of goods and services, and on its importation of goods other than capital goods for the First Quarter of the taxable year 2003, computed as follows:

Amount claimed	P 5,057,120.95
Less: Disallowances	(34,172.45)
	(884,550.93)
TOTAL	**P 4,138,397.57**
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SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

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[9] Exhibit "D-2"
[10] 2004 being a leap year
[11] Exhibit "E"

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

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