REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CONCEPCION-CARRIER REALTY HOLDINGS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6137

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 17 2003

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DECISION

This Petition for Review involves a claim for refund or issuance of tax credit certificate in the amount of P15,000,000.00 allegedly representing petitioner's unutilized input VAT for the second quarter of 1998.

As borne out by the records, the antecedent facts of the case are as follows:

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office address at No. 087 Dr. A. Santos Avenue, Paranaque City *(par. 1, Facts Admitted)*. Its primary purpose is to acquire and hold title to real property, to construct and operate facilities for the manufacture of heating, ventilating and airconditioning equipment and to lease all or part of any such land and the building or other structures thereon at any time *(Exhibit S-1)*.

On May 14, 1998, petitioner registered with the Bureau of Internal Revenue, Revenue District No. 052 as a Value-Added Taxpayer (VAT)-taxpayer with Taxpayer

Identification Number (TIN) 200-896-027-000 and with Certificate of Registration No. OCN IRC0000023379 *(Exhibit A)*.

On May 26, 1998, petitioner purchased a parcel of land with an area of fifty thousand (50,000) square meters from Carmel Village Square Corporation (CVSC) in the amount of ONE HUNDRED FIFTY MILLION PESOS (P150,000,000) plus 10% Value-Added Tax in the amount of FIFTEEN MILLION PESOS (P15,000,000) *(Exhibits B and C)*.

On November 25, 1999, petitioner simultaneously filed its Quarterly Value-Added Tax Returns for the 2nd, 3rd, and 4th quarters of 1998 and for the 1st, 2nd, and 3rd quarters of 1999 *(Exhibits I, J, K, L, R, and M, inclusive of submarkings)*. In its 1998 second quarterly VAT return, petitioner declared domestic purchases in the amount of P150,000,000 and VAT input tax of P15,000,000. Said input VAT was carried over to the succeeding quarters.

On January 19, 2000 petitioner filed its Quarterly Value-Added Tax Return for the 4th quarter of 1999. Again, the return showed that petitioner carried-over its previous input VAT in the amount of P15,000,000.00 *(Exhibit N)*.

Alleging that it does not expect any output VAT prior to the completion of the project from which its input VAT may be offset, petitioner filed an administrative claim for the refund of its unutilized input VAT on March 10, 2000 with the Bureau of Internal Revenue, Revenue District Office No. 52 *(Exhibit F)*.

Subsequently, on April 24, 2000, petitioner filed its Quarterly VAT Return for the 1st quarter of 2000, declaring again in the return that it carried over its previous input tax of P15,000,000. It also declared that for the same period, it has paid input tax on its domestic purchases in the amount of P8,088.00 *(Exhibit O)*.

On July 20, 2000, petitioner filed its Quarterly VAT Return for the 2nd quarter of taxable year 2000, showing the amount of P15,008,088 as input tax carried over from previous quarter (*Exhibit P*).

Finally, petitioner filed its Quarterly VAT Return for the 3rd quarter of taxable year 2000, this time reflecting zero amount in the items referring to the total sales/receipts/output tax *(Exhibit Q-1)*, net creditable input tax, *(Exhibit Q-2)*, VAT payable *(Exhibit Q-3)*, and tax payable*(Exhibit Q-4)*. .

Failing to obtain an affirmative response from the respondent and fearing that its claim would be barred by the two-year prescriptive period within which to file a judicial claim for refund, petitioner filed a Petition for Review with this court on June 26, 2000 through registered mail.

In his Answer filed on August 22, 2000, respondent raised the following Special and Affirmative Defenses, to wit:

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

5. Since "taxes are presumed to have been collected in accordance with laws and regulations" *(Caltex Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No.2871, January 29, 1986)*, the petitioner has the burden of proof that the taxes sought to be refunded were erroneously or illegally collected lies on the petitioner;

6. In *Citibank, NA vs. Court of Appeals, 280 SCRA 459 (1997)*, the Supreme Court ruled that:

> "A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit/refund."

Mere allegations of entitlement to refund by petitioner are not enough.

7. Claims for tax refund/tax credit are construed in "strictissimi juris" against the taxpayer (*Commissioner of Internal Revenue vs. Ledesma, G. R. No. L-13509, January 30, 1979, 31 SCRA 95 (1979)*. This is due to the fact that claims for refund/credit partake the nature of an exemption from tax. Thus, it is incumbent upon the petitioner to prove that it is indeed entitled to the refund /credit sought. Failure on the part of the petitioner to prove the same is fatal to its claim for tax credit. He who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. *(Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466);*

8. Petitioner must show compliance with the provisions of Section 204 (c) and Section 229 of the 1997 Tax Code on the filing of a written claim for refund within two (2) years from the date of payment of tax.

Counsel for the respondent submitted this case for decision based on the pleadings (*page 150, CTA Records*). However, he filed a Memorandum on October 10, 2001 while petitioner filed its memorandum on August 14, 2002. On September 5, 2002, this case was submitted for decision *(page 232, CTA Records).*

The issues we are tasked to resolve have been stipulated by the parties to be as follows:

1. Whether or not petitioner has an unutilized value-added tax input in the amount of P15,000,000.00;

2. Whether or not petitioner complied with the requirements necessary for the refund of alleged unutilized input VAT in the amount of P15,000,000; and

3. Whether or not petitioner's claim for refund of alleged unutilized input VAT for the taxable year 1998 is substantiated by documentary evidence.

Petitioner maintains that it is entitled to the refund or issuance of a tax credit certificate of its unutilized input VAT of P15,000,000.00. It cited as its legal bases the provisions of Section 112 of the 1997 National Internal Revenue Code, as amended and Section 4.106-1 of Revenue Regulations No.7-95, hereunder reproduced for easy reference:

> **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 may, <u>within two (2) years after the close of the taxable quarter when the sales were made,</u> 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. x x x x (Underscoring supplied).
>
> **SEC 4.106-1.** *Refunds or tax credits of input tax-*
>
> **(c)** *Land-* Only a VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes on land purchased to the extent that such input has not been applied to output tax. The application should be made within two (2) years after the close of the taxable quarter when the purchase was made.
>
> Refund of input taxes on land shall be allowed only to the extent that such land is used in VAT taxable business.

According to petitioner, it purchased land from the CVSC in the amount of P165,000,000.00, inclusive of value-added tax. In support of its claim, petitioner submitted in evidence the Deed of Absolute Sale, VAT Official Receipt, Certificate

Authorizing Registration and Transfer Certificate of Title *(Exhibits B, C, D and E).* Moreover, petitioner argued that while it carried-over the input VAT to the succeeding quarters, it was not able to apply it against any output VAT liability. To prove that the input value-added tax remained unutilized, petitioner presented to the court its Quarterly VAT Returns for the 2nd, 3rd, and 4th quarters of 1998, all the Quarterly VAT Returns for 1999 and the Quarterly VAT Returns for the 1st, 2nd and 3rd quarters of 2000 *(Exhibits I, J, K, L, M, N, O, P,Q and R, inclusive of sub-markings).*

On the other hand, respondent argued that the claim for refund should be denied for failure of the petitioner to comply with the requirements set forth under Section 4.106.1 (c) of Revenue Regulations No. 7-95, above-quoted, which are as follows:

1. That the applicant must be a VAT-registered person;
2. That there be a purchase of land;
3. That the purchase of land is substantiated by sufficient evidence;
4. That the input taxes have not been applied against the output taxes;
5. That the application for the refund of unutilized or excess creditable input VAT arising from the purchase of land has been made within two years after the close of the taxable quarter when the purchase was made;
6. That the land subject of the purchase was used by the applicant in his VAT taxable business.

According to respondent, petitioner failed to comply with the fourth, fifth and sixth requirements. As regards the fourth requirement, respondent claimed that the various quarterly VAT returns presented by petitioner indicate that the alleged unutilized input VAT generated for the taxable year 1998 was carried forward to the subsequent quarters of 1998 and applied against its output VAT liability for that taxable year.

Moreover, respondent argues if the input tax for which an application for refund or issuance of certificate cannot be directly attributable to any of the taxable and exempt transactions, only the aliquot share of input taxes which is apportionable to the taxable transactions may be refunded or issued a tax credit certificate.

On the fifth requirement, respondent claimed that petitioner's claim is already barred by prescription. Its judicial claim for refund filed on July 12, 2000 was already beyond the two-year reglementary period reckoned from June 30, 1998, which was the close of the taxable quarter when petitioner purchased the land.

On the sixth requirement, respondent asserted that petitioner failed to comply with the provisions stated in Section 4.104-5 of Revenue Regulations No. 7-95, which provides, thus:

> **Section 4.104-5.** *Substantiation of claims for input tax credit.-*
>
> (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Tax Code (Emphasis supplied).

We find for the petitioner.

After a careful evaluation of the evidence presented, the court is convinced that indeed petitioner has an unutilized input VAT in the amount of P15,000,000. The documentary evidence presented by petitioner are the Deed of Absolute Sale, VAT Official Receipt, Certificate Authorizing Registration, Transfer Certificate of Title, its Quarterly VAT Returns for the 2nd, 3rd, and 4th quarters of 1998, all the Quarterly VAT Returns for 1999 and the Quarterly VAT Returns for the 1st , 2nd and 3rd quarter of 2000

(Exhibits B, C, D, E, I, J, K, L, M, N, O, P, Q and R, inclusive of sub-markings). These documents prove that petitioner purchased land worth P165,000,000, inclusive of 10% VAT, and that petitioner had accordingly declared such amount in its Quarterly Value-Added Tax Return for the 2nd quarter. Furthermore, it can be ascertained from the evidence that petitioner carried over the unutilized input VAT from the 2nd quarter of 1998 to the 2nd quarter of the taxable year 2000 and remained unutilized as there was no transaction recorded subject to the output VAT.

On the second issue, we also rule in the affirmative. It must be pointed out that petitioner's reliance on the provisions of Section 112(A) of the 1997 Tax Code is misplaced since the transaction involved in this case is not zero-rated or effectively zero-rated sale. However, petitioner's claim for refund on the basis of Section 4.106-1 of Revenue Regulations 7-95 is proper. To reiterate, in order that petitioner's claim for refund may prosper, Section 4.106-1 of Revenue Regulations 7-95 provides the following requisites:

1. That the applicant must be a VAT-registered person;
2. That there be a purchase of land;
3. That the purchase of land is substantiated by sufficient evidence;
4. That the input taxes have not been applied against the output taxes;
5. That the application for the refund of unutilized or excess creditable input VAT arising from the purchase of land has been made within two years after the close of the taxable quarter when the purchase was made;
6. That the land subject of the purchase was used by the applicant in his VAT taxable business.

In other words, a VAT registered taxpayer may apply for the issuance of tax credit certificate or refund of input taxes on land provided that an input tax has been paid on the purchase of the land and the same has not been applied to any output tax. The application must be made within two years after the close of the taxable quarter when the purchase was made. In addition, the land purchased must be used in VAT taxable business *(KBP Real Estate Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6035, promulgated on May 15, 2002).*

It may not be amiss to point out that Section 4.106-1 of Revenue Regulations 7-95 is based not on Section 112(A) of the Tax Code, as relied upon by petitioner, but on Section 112(B) which states:

> "(B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Thus, on the basis of Section 112(B) of the 1997 Tax Code and Section 4.106-1 of Revenue Regulations No. 7-95, petitioner may claim for the refund or issuance of a tax credit certificate of input taxes on land.

That petitioner was able to comply with the first three requirements is conceded (*page 5, Memorandum for the Respondent; page 165, CTA Records*). Thus, this court will now dwell on the other aforementioned requisites.

As regards the fourth requirement, we find that petitioner has not applied its input tax against the output taxes. While it is true that petitioner carried over its input tax for the 2nd taxable quarter of 1998 to the succeeding quarters, records will show that it remained unutilized upto the 3rd taxable quarter of 2000. No sales were recorded subject to VAT, the output VAT of which could have been credited against the unutilized input VAT.

On the fifth requirement, we find both the administrative and the judicial claims for refund well within the two (2)- year reglementary period. We find no merit in the contention of the respondent that petitioner's claim is already barred by prescription since the Petition for Review was filed only on July 12, 2000. The court indeed received the copy of the Petition for Review on July 12, 2000, but such date cannot be considered as the date of actual filing taking into consideration that the filing of the said pleading was done through registered mail. Section 3 Rule 13 of the Rules of Court provides:

Rule 13

> **SEC 3.** *Manner of filing*. The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date, and hour of filing. In the second case, the date of the mailing of motions, pleadings or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment or deposit in court. The envelope shall be attached to the record of the case (emphasis supplied).

The law requires that the claim for refund should be filed within two years after the close of the taxable quarter when the purchase was made. The two year period should then be reckoned from June 30, 1998 which is the close of the taxable quarter when petitioner purchased the land. From the above provision, it can be inferred that petitioner's claim for refund filed through registered mail on June 26, 2000 as evidenced by the registry receipt as well as the post office stamp on the envelope attached to the record of the case falls within the allowable period *(CTA Records, p.18 and Exhibit U-4).*

On the sixth requirement, the records reveal that petitioner purchased the land in furtherance of a VAT taxable business, which is leasing the property. Petitioner's Articles of Incorporation states that the primary purpose of the corporation is to acquire and hold title to real property, to construct and operate facilities for the manufacture of heating, ventilating and airconditioning equipment and to lease all or part of any such land and the building or other structures thereon at any time *(Exhibit S-1).* Section 108(A) of the 1997 Tax Code provides that there shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. Hence, the subsequent leasing of the property by petitioner shall be subject to value-added tax subject to the other requirements of the law.

On the final issue as to whether or not petitioner's claim for refund is substantiated by documentary evidence, our answer is also affirmative. Revenue Audit Memorandum Order No. 1-99 provides that for purposes of filing VAT credit or refund claims, purchases of goods or properties shall be evidenced by a VAT purchase invoice, while purchase of services shall evidenced by official receipts.

As earlier stated, petitioner presented as evidence the Deed of Absolute Sale executed by petitioner and Carmel Village Square Corporation, the VAT official receipt which prove that petitioner purchased the land and that it had paid the consideration thereof as well as the 10 % VAT. Also, it presented to the court its Quarterly Value-Added Tax Returns for the 2nd quarter of 1998 up to the 3rd quarter of the taxable year 2000 showing that petitioner had reported such domestic purchase, the input VAT and that it remained unutilized as there were no sales reported subject to output VAT.

WHEREFORE, in the light of all the foregoing, the instant Petition for Review is hereby ***GRANTED***. Accordingly, respondent is **ORDERED** to **REFUND**, or, in the alternative, **ISSUE A TAX CREDIT CERTFICATE**, in favor of the petitioner in the amount of P15,000,000.00 representing petitioner's unutilized input VAT for the second quarter of 1998.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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