REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5678

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

MAY 24 2000

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# DECISION

Before Us for consideration is a Petition for Review filed on September 30, 1998 wherein Petitioner is seeking for the refund of the sum of THREE MILLION SEVEN HUNDRED TWO THOUSAND EIGHT HUNDRED SIXTEEN and 67/100 (P3,702,816.67) representing excess creditable VAT input payments for the third quarter ended September 30, 1996.

The antecedent facts giving rise to the controversy at bar are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the BIR as a VAT taxpayer as shown by the VAT Certificate of Registration No. 95-044-002738 wherein it has been issued Taxpayer Identification No. 004-481-874-VAT on its sale of goods (Exhibit "B").

On October 22, 1996, Petitioner filed its quarterly VAT return (Exhibit "A") for the third quarter ended September 1996 declaring among others the amounts of P2,690,664.35 and P1,817,927.00 as creditable VAT inputs from its domestic purchases and importations, respectively. Contained in the said return are the following detailed information:

| | | |
|---|---|---|
| VAT output tax | | P 410,11 0.38 |
| Less: VAT input tax carried over from previous quarters | | 54,995,756.93 |
| Domestic purchase of goods/ services | P2,690,664.35 | |
| Importation of goods | 1,817,927.00 | 4,508,591.35 |
| Total | | P 59,504,348.28 |
| Excess VAT credit | | P 59,094,237.90 |

Petitioner opted to carry over the aforementioned excess input tax to the subsequent quarter. However, it changed its mind when it applied for a refund of the VAT input tax for the current taxable year. Out of the amount of P4,508,591.35, only the amount of P3,702,816.67 was claimed as a refund, broken down as follows:

| | Amount |
|---|---|
| Local Purchases | P2,009,282.67 |
| Importations | 1,693,534.00 |
| T o t a l | P3,702,816.67 |

True enough, the amended quarterly value added tax return for the 4th quarter of taxable year 1996 (Exhibit D) shows that the said amount of P3,702,816.67 was deducted from the total available input tax (Exh. D-1) signifying petitioner's intention that it would no longer utilize the said amount as credit to future output tax liability.

On August 27, 1998, Petitioner filed an application for tax credit/refund of value added tax paid with the One-Stop Shop Inter Agency Tax Credit and Drawback Center of the Department of Finance in the amount of P3,702,816.67 (Exhs. C and C-1).

Respondent failed to act immediately upon said claim. In order to protect its right, Petitioner, on September 30, 1998, elevated the matter before this Court by way of Petition for Review. In Answer thereof, Respondent raised the following Special and Affirmative Defenses, to wit:

> "4. The alleged claim for refund is still subject to administrative routinary investigation and/or examination by the Respondent Bureau.
>
> 5. The taxes so claimed have been paid and collected in accordance with law and regulations, hence not refundable;
>
> 6. Claims for refund are construed strictly against the claimant for the same partake of the nature of an exemption from taxation (Commission of Internal Revenue vs. Ledesma, 31 SCRA 95). Taxation is an inherent power of the state and taxes are considered the lifeblood of the nation. It is therefore incumbent upon petitioner to prove by express provision of law that it is entitled thereto. Failure on the part of the Petitioner to do so, all doubts as to the regularity of the claims for refund must be resolved in favor of the respondent.
>
> 7. Moreover, it is incumbent upon petitioner to prove that it has complied with the provisions of Section 230 of the Tax Code."

Petitioner, for its part, in order to prove that he is entitled to the claim for Refund, submitted the following documents:

| Exhibit | Description |
|---|---|
| "A" and "D" | Petitioner's Quarterly VAT Return for the 3rd and 4th quarter of 1996. |
| "C" | Application for Tax Credit/Refund of VAT paid for the 3rd quarter amounting to P3,702,816.67. |
| "B" | BIR Certificate of Registration No. 95-044-002738 issued to Petitioner. |
| "E to E-14" | Report of the Independent CPA on the results of the Procedures Performed on Input Tax Claims. |
| "F to F-1" | Summary of Petitioner's VAT input tax credits. |
| "G" | Folder containing the VAT invoices and/or official receipts, import entry declarations and other supporting documents on the tax refund. |

The aforementioned documentary evidence were attested to by the witnesses presented by the Petitioner. The independent auditor commissioned by this Court, verified the accuracy of Petitioner's claim for refund of creditable input tax which arose from the local purchases and importations of capital goods and services. (Exhibits E to E-14). However, findings of the said independent auditor upon examination of the documentary evidence reveals some exceptions:

a) For Petitioner's Local Purchases

| | |
|---|---|
| 1) Purchases of services supported by non VAT ORs. | P 4,679.23 |
| 2) Purchases of goods without supporting invoices. | 34,560.89 |

| | |
|---|---|
| 3) Input Taxes incorrectly claimed due to the use of erroneous tax bases. | 81.00 |
| Total amount of Exception | P39,321.12 |

b) For Petitioner's Importations

| | |
|---|---|
| 1) Input taxes incorrectly claimed due to the use of erroneous tax base. | 300.00 |
| 2) Import tax claimed in the quarter but deleted in the 4th quarter to properly reflect the balance of input tax in the books. | P28,062.00 |
| Total amount of Exception | P28,362.00 |

All told, the main issue needing ventilation in the case at bar is WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE EXCESS VAT INPUT TAXES IT PAID AMOUNTING TO P3,702,816.67 FOR THE THIRD QUARTER ENDED SEPTEMBER 30, 1996.

The refund of unutilized or excess creditable VAT inputs from domestic purchases and importations of capital goods is not one of first impression. For easy reference, we quote hereunder Sections 106 and 106(d), now Sections 112 and 112(d) of the Tax Code which were used by the Petitioner as its legal bases in its claim for refund, thus:

"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 is 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.

(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.

(C) x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

We could then adduce from the said provisions, the basic requirements which must be satisfied in order for refunds or tax credits of input tax may be granted, to wit:

1. That the applicant must be a VAT-registered person;

2. That there be a domestic purchase or importation of capital goods ;

3. That the domestic purchase or importation of capital goods is substantiated by sufficient evidence;

4. That the input taxes have not been applied against output taxes; and

5. That the application for the refund of unutilized or excess creditable VAT inputs arising from the domestic purchase and importation of capital goods has been made within two years after the close of the taxable quarter in which the importation or purchase was made.

It appears quite evident in the case at bar that there was sufficient compliance with the aforementioned requirements.

First, it has been proven that Petitioner is a VAT registered taxpayer as evidenced by Petitioner's VAT Registration Certificate No. 95-044-002738 issued by Revenue District Office No. 44, Taguig, Pateros effective October 9, 1995 (Exhibit B).

Second, the domestic purchases and importations of capital goods and the creditable VAT inputs generated therefrom is clearly reflected in Petitioner's quarterly VAT return (Exh. A) and is evidenced by the various invoices, official receipts, import entry declarations and other relevant documents submitted by Petitioner.

Third, it could be inferred from the quarterly VAT returns of the third and fourth quarters of 1996 (Exh. A and D), respectively) the fact that the creditable

VAT inputs generated during the third quarter of 1996 was not applied against any output VAT liability.

And lastly, Petitioner's claim for refund was filed within the two-year prescriptive period as provided under Section 230 in relation to Section 106(a) and (b) and Sections 110 of the Tax Code. As the reckoning date from which the two-year prescriptive period is to be counted appears to be ambiguous, this Court has already settled said matter in a resolution it promulgated on July 20, 1998 in which it ruled that the two-year period of the claims for VAT refund should be counted from the date of filing of the VAT return. Thus:

> "This Court, x x x consequently agrees with the interpretation of petitioner that the two-year period should be counted from the date of filing of the corresponding VAT quarterly return which is within 20 days after the close of each taxable quarter.
>
> "This will harmonize Section 106 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the case of CIR vs. TMX Sales, Inc., GR No. 83736, dated January 15, 1992; and ACCRA Investments Corp. vs. CIR, 204 SCRA 957, that the two year period should be counted from the filing of the final income tax return because it is only during that date that the exact tax liability or refundability of tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore, to conclude that the two-year period should not immediately be counted from the close of the quarter but from the date of filing of the VAT return (Atlas Consolidated Mining and Development Corporation vs. CIR, CTA Case No. 5296, July 20, 1998).

Applying the foregoing in the case at bar, it is apparent that Petitioner's claim has not yet been barred by prescription. It is to be recalled that Petitioner filed its application for tax credit/refund of the VAT paid in the administrative level on August 27, 1998 (Exhibits C and C-1) and the Petition for Review on September 30, 1998.

Both dates of filing are well within the two-year prescriptive period commencing on October 22, 1996 (Exh. A), the date when the third quarterly VAT return was filed.

Having established the legal right of the Petitioner to the refund sought for, we will now proceed to determine the exact amount of VAT input tax to be refunded to the Petitioner.

Records of the case shows that on March 25, 1999, this Court commissioned an independent auditor in the person of Mr. Ruben R. Rubio to perform a special audit on Petitioner's claim for Refund. In his report dated April 26, 1999, the independent auditor states that out of the total claim for refund in the amount of P3,702,816.67, the amount of P39,321.12 for Petitioner's domestic purchases and P28,362.00 for its importations should be disallowed for the reason earlier discussed.

After a review of the evidence at hand, this Court agrees with the findings of the Independent Auditor as to the disallowed amount as well as the reasons for the disallowance. The report prepared by the commissioned CPA is given weight as it is in order and consistent with the auditing procedures conducted by this Court. However, a further examination of the pertinent documents (Exh. G) such as the sales invoice, official receipt, import entry declaration and bank debit advice, reveals that the claim for input tax in the amount of P388,627.78 should likewise be disallowed for the following reasons:

1. The official receipt with reference no. 1228 issued by Datem Inc. with the input VAT of P10,638.78 should be disallowed as the receipt bears no date. (See 251/292 of Exhibit G). The date is vital in order to determine when the receipt is issued and whether it falls within the quarter/period involved in the claim for refund.

2. The import entry declaration with the input VAT of P377,989.00 should likewise be disallowed as it has no supporting document that could establish the fact of payment. (See 257/292 to 263/292 of Exhibit G). As the import entry declaration is not the certified true copy of the document, a bank debit advise should be attached thereto as proof of payment of the input VAT.

Considering all the foregoing disallowances, the final amount of input VAT to be refunded should be reduced to P3,246,505.77 computed as follows:

A. COMMISSIONER OF INTERNAL REVENUE

| | | |
|---|---|---|
| Claimed Amount | | P2,009,282.67 |
| Less: Disallowances | | |
| (a) Per SGV verification | | |
| (Exhs. A-1 to A-3) | P39,321.12 | |
| (b) Per Court's verification | 10,638.78 | 49,959.90 |
| Refundable Amount | | P1,959,322.77 |

B. COMMISSIONER OF CUSTOMS

| | | |
|---|---|---|
| Claimed Amount | | P1,693,534.00 |
| Less: Disallowances | | |
| (a) Per SGV verification | | |
| (Exhs. B-1 to B-2) | P 28,362.00 | |
| (b) Per Court's verification | 377,989.00 | 406,351.00 |
| Refundable Amount | | P1,287,183.00 |

TOTAL REFUNDABLE AMOUNT P3,246,505.77

**WHEREFORE**, in the light of the foregoing, finding the Petition to be partially meritorious, the same is hereby **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** in favor of the Petitioner the reduced amount of P3,246,505.77 representing the excess VAT input taxes paid for the third quarter ended September 30, 1996.

**SO ORDERED.**

ERNESTO D. ACOSTA
Presiding Judge

**WE CONCUR:**

AMANCIO Q. SAGA
Associate Judge

(on leave)
RAMON O. DE VEYRA
Associate Judge

## CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge