REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION (MANILA BRANCH),
Petitioner,

- versus -

C.T.A. CASE NO. 6016

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 17 2003

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P1,393,888.72 allegedly representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and servi‹ › for the four quarters of taxable year 1998.

Petitioner Nichimen Corporation (Manila Branch) is a resident foreign corporation organized and existing under and by virtue of the laws of Japan but is licensed to do business in the Philippines through its Manila branch with office at the 20/F, Pacific Star Bldg., Sen. Gil Puyat Avenue, Makati City *(par. 1, Facts Admitted, page 56, CTA records).* It is engaged in the business of indenting, wholesaling, buying and selling of lumber, abaca, sugar, mineral ores, machinery, steel products, cement and sundry goods in the Philippines, manufacturing and engineering act‹ ›ties; in the business of buy and sell of industrial materials, textiles, foodstuff to include oilseed, feeds, canned goods, etc., chemicals, steel products of ferrous and non-ferrous metal products and products allied to

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those mentioned above *(Annex A, Petition for Review).* In the year 1997, petitioner expanded its business activity to include in its primary purpose, to engage in the business of commercial agency in the Philippines, and to acquire equities and invest as may from time to time be considered necessary.

On June 17, 1994, it was registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 94-490-000394 *(Annex B, Petition for Review).*

For the year 1998, petitioner filed its quarterly Value-Added Tax Returns reflecting, among others, the following domestic purchases of goods and services with their corresponding payments of VAT input tax, to wit:

Quarter	Date Filed	Exhibit	Amount of Purchases	Input VAT Paid
1st	04-08-98	A	P 3,987,779.11	P 398,777.96
2nd	07-14-98	B	2,432,791.89	243,279.21
3rd	10-09-98	C	2,487,370.60	248,737.06
4th	06-09-99	D	5,030,945.02	503,094.49
	Total		P 13,938,886.62	P 1,393,888.72

The aforesaid returns were simultaneously amended on April 17, 2001, in order to reflect its sales of services for the year 1998 in the total amount of P49,116,868.39, detailed as follows:

Quarter	Date Filed	Exhibit	Sales for the Quarter	Input VAT Paid
1st	04-17-01	DD to DD-2	P 12,868,869.13	P 398,777.96
2nd	04-17-01	EE to EE-2	14,961,432.88	243,279.21
3rd	04-17-01	FF to FF-2	12,651,068.30	248,737.06
4th	04-17-01	GG to GG-2	8,635,498.08	503,094.49
	Total		P 49,116,868.39	P 1,393,888.72

Petitioner alleged that the consideration for the above-listed sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and

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regulations of Bangko Sentral ng Pilipinas *(page 20, TSN, August 14, 2000)*. Hence, they were subject to output VAT at 0% pursuant to Section 108(B)(2) of the Tax Code. Petitioner further avers that the input taxes incurred during the year 1998 were all attributable to its zero-rated sales.

On October 27, 1999, petitioner filed with Revenue District Office No. 49, North Makati, Revenue Region No. 8, Bureau of Internal Revenue, an administrative claim for refund or issuance of tax credit certificate in the amount of P1,393,888.72 representing excess input VAT for the year 1998 *(Exhibits CC and CC-1)*.

On February 16, 2000, petitioner filed the instant Petition for Review in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code, as amended.

In his Answer, respondent raised the following as Special and Affirmative Defenses:

> 5. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;
>
> 6. Petitioner has not shown proof that the alleged VAT input taxes are attributable to its export sales and that the same have not yet been applied to the output tax for the period covered in its claim for any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Central Bank;
>
> 7. The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid;
>
> 8. The claim has partially prescribed;
>
> 9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

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

11. Well-settled is the rule that claims for refund are construed against the claimants since it partakes of the nature of an exemption form taxation.

On August 13, 2002, this case was submitted for decision sans the evidence and memorandum of the respondent.

The following issues were the jointly stipulated by the parties for resolution of the court:

1. Whether or not petitioner duly filed the administrative claim for refund within the two-year prescriptive period prescribed by Section 229 of the Tax Code;

2. Whether or not petitioner did incur input taxes in the amount of P1,393,888.72 for the period January 1 to December 31, 1998, which remained unutilized as it was engaged in purely VAT zero-rated sales of services;

3. Whether or not the input taxes incurred by petitioner for the period of January through December 1998 are properly substantiated by official receipts and invoices;

4. Whether or not petitioner generated VAT zero-rated sales for the period January 1 to December 31, 1998;

5. Whether or not the input taxes incurred by the petitioner for the year 1998 have been carried over to and utilized in the succeeding year 1999; and

6. Whether or not herein petitioner is entitled to a tax credit certificate/refund in the aggregate amount of P1,393,888.72 representing the amount of input taxes paid on its purchases of goods and services for the period January 1 to December 31, 1998 *(Issues, Joint Stipulation of Facts and Issues, pages 57 to 58, CTA records).*

Anent the first issue, records show that the filing of the claim for refund in the administrative level and the petition for review with this court were within the two-year

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period. Petitioner filed its claim for refund with the Bureau of Internal Revenue on October 27, 1999, and this petition, on February 16, 2000, both well within the two-year period reckoned, at the earliest, from April 8, 1998, the date when petitioner filed its original 1998 first quarterly VAT return (**Resolution, Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296, July 20, 1998**).

We proceed to the remaining issues.

Petitioner avers that it renders indenting services to its Tokyo Head Office, a non-resident corporation. Since the consideration for the said services were allegedly paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, they are subject to VAT at 0% pursuant to the provisions of Section 108(B)(2) of the Tax Code which provides:

> **Section 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.*** - 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);
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). [Underlining supplied].

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Consequently, petitioner asserts that it is entitled to the refund of input taxes attributable to such zero-rated sales in accordance with Section 112 of the Tax Code –

> **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.

Respondent, on the other hand, pointed out in his Answer that petitioner failed to comply with the substantiation requirements under Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, which implemented the above provisions of law.

For easy reference, Section 16(c) is hereby quoted as follows:

> "Sec. 16. Refunds or tax credits of input tax. —
>
> (a) Zero-rated sales of goods and services. — xxx
>
> (b) Capital goods. – xxx.
>
> (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 business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

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A photo copy 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

xxx xxx xxx

2. Zero-rated sale of services.

i) Authenticated copy of the contract showing the person for whom the services were rendered, the amount of the consideration and description of the services and document evidencing actual payments.

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

Under subparagraphs 1(ii) and 2(ii), the statement shall show the amount in foreign currency of the export proceeds or consideration and the date of inward remittance, conversion rate into Philippine currency and the total peso value thereof.

"3. Effectively zero-rated sale of goods and services.

"i) Photo copy of approved application for zero rate if filing for the first time.

"ii) Sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.

"iii) Evidence of actual receipt of goods or services.

xxx xxx xxx

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

We rule against the petitioner.

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An examination of the documents submitted by petitioner would show that it failed to prove with supporting documents the alleged zero rated sales declared in its 1998 amended quarterly VAT returns. Furthermore, petitioner failed to comply with the substantiation requirements under Section 16(c)(2) of Revenue Regulations No. 5-87, as amended. Petitioner is engaged on zero-rated sales of services and not on effectively zero-rated sales under Section 16(c)(3) of the same regulation.

In claiming for the refund of input taxes attributable to zero-rated sales, a taxpayer must foremost establish that it has zero-rated sales. Records show that petitioner declared a total amount of P49,116,868.39 as its zero rated sales for the year 1998. Yet, there are no collaborating evidence such as sales invoices and official receipts to support its declaration. These evidence are necessary to verify the veracity of the amounts declared in the returns and to further trace whether the amounts remitted were indeed for zero-rated sales. Without such documents, the court cannot conclude with certainty that the remittances appearing in the credit advices *(Exhibits F to Z, and AA)* pertained to the alleged zero-rated sales. Moreover, the credit advices have little probative value considering that they bore no explanation as to the purpose of remittance.

Lastly, petitioner must also present the authenticated copy of its contract for indenting services with Tokyo Head Office as required under Section 16(c)(2)(i) of Revenue Regulations No. 5-87, as amended. The authenticated copy of the contract is required to establish the person for whom the services were rendered, the amount of the consideration and the description of the services. This is necessary in order to validate whether the remittances of the foreign currency exchange proceeds came from the person stated in the contract and in consideration for the services rendered.

In the absence of the aforementioned documents, the court has no way of verifying whether the amounts reflected in the respective quarterly VAT returns for the year 1998 are accurate and qualify as zero-rated sales for VAT purposes. Thus, for failure to meet the requirements provided by law, petitioner's claim must necessarily fail.

Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption (**Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377**).

WHEREFORE, in view of the foregoing, petitioner's claim for refund is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

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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

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