LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROHM ELECTRONICS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5673

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 25 2000

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DECISION

This Petition for Review is seeking for the refund or issuance of a tax credit certificate in the amount of P24,547,381.31, representing unutilized input value-added taxes (VAT, for brevity) paid on domestic purchases of taxable goods and services and on importation of goods attributable to zero-rated export sales for the period July 1, 1996 to March 31, 1997.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office in People Technology Complex, Carmona, City. It is registered with the Board of Investments in accordance with the provisions of the Omnibus Investments Code of 1987 (CTA records, pp. 31-33). It i[illegible] registered with the Bureau of Internal Revenue as a VAT entity [illegible] certific[illegible] Registration RDO Control No. 94-540-000165, dated June 13, 19[illegible] [illegible]. A)[illegible] principally engaged in the business of manufacturing and exporting microchip resistors, capacitors, integrated circuits and other electronic products.

For the period July 1, 1996 to March 31, 1997, Petitioner seasonably filed its quarterly Value-Added Tax (VAT) Returns showing, among others, the following information:

DETAILS OF SALES

Period Covered	Exh.	Gross Taxable Goods/Services	Output Tax	Zero Rated Sales
07-01-96 to 09-31-96	B, B-1 & B-2	P 30,407.32	P 3,040.73	P1,146,406,356.11
10-01-96 to 12-31-96	C, C-1 & C-2	19,626.71	1,962.59	1,211,193,420.93
01-01-97 to 03-31-97	D, D-1 & D-2	41,473.29	4,148.11	1,418,680,952.32
	Totals	P91,507.32	P9,151.43	P3,776,280,729.36

DETAILS OF PURCHASES

Period Covered	Domestic Purchases of Goods/Services	Input Tax	Importation of Goods	Input Tax
07-01-96 to 09-31-96	P 62,911,066.57	P 6,291,106.65	P 3,710,800.00	P 371,080.00
10-01-96 to 12-31-96	94,680,849.21	9,468,084.91	2,250,720.00	225,072.00
01-01-97 to 03-31-97	38,358,600.22	3,835,860.02	44,437,704.70	4,443,770.47
Totals	P195,950,516.00	P19,595,051.58	P50,399,224.70	P5,039,922.47

Petitioner, believing that it is entitled to the refund of input VAT because most of its sales were exported, filed with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, three separate Applications for Tax Credit/Refund of Value-Added Tax Paid, detailed as follows:

Period Covered	Date Filed	Exh.	Import VAT	Local VAT	Total
07-01-96 to 09-31-96	08-29-97	E, F, G	P 370,830.00	P 6,206,363.42	P 6,577,193.42
10-01-96 to 12-31-96	09-24-97	H, I, J	220,523.00	9,475,107.15	9,695,630.15
01-01-97 to 03-31-97	02-16-98	K, L, M	4,443,770.47	3,835,860.02	8,279,630.49
		Totals	P5,035,123.47	P19,517,330.59	P24,552,454.06

On September 29, 1998, Petitioner filed a judicial claim for refund, by way of the instant Petition for Review, in the amount of P24,634,974.03 in order to toll the running of the two-year prescriptive period under the law.

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

> 5. Petitioner's claims for refund/tax credit are still undergoing administrative routinary examination/investigation by the Department of

Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center;

6. Petitioner miserably failed to demonstrate that the taxes subject of the case at bar were erroneously or illegally collected on account of its dereliction to present proofs showing that its alleged sales are covered by the provisions of Section 106(A)(2)(a)(1) of the Tax Reform Act of 1997;

7. The total amount of P24,547,381.31 being claimed by petitioner as alleged unutilized input tax credits for the period July 1, 1996 to March 31, 1997 was not properly documented;

8. In an action for refund/credit, 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; and

9. In the long line of cases decided by no less than this Honorable Court, as affirmed by the Court of Appeals and the Supreme Court, claims for tax refund/credit are construed in *strictissimi juris* against the taxpayer as they partake the nature of exemption from tax.

On November 23, 1998, a Pre-Trial Brief was filed by Petitioner of which Respondent admitted all three proposed stipulation of facts, namely: (1) that Petitioner is a BOI registered enterprise; (2) that it is a VAT registered entity; and (3) that the instant Petition for Review was filed within the two-year period prescribed under Section 230 of the Tax Code. As a result of these stipulated facts, the Court ruled that the only issue left to be resolved is factual, that is, whether or not Petitioner is entitled to the tax credit/refund of the unutilized input VAT for the period July 1, 1996 to March 31, 1997 (see *Minutes of the Session*, November 26, 1998, CTA records p. 44).

Meanwhile, witness for the Petitioner, Ms. Sandra Alkuino, manifested during the session held on August 24, 1999, that Tax Credit Certificates have already been [illegible] for VAT input taxes paid on local purchases of goods and services for the period October 1996 to December 1996 and for January 1, 1997 to March 31, 1997. However, tax credit certificates have not yet been granted for VAT input taxes incurred on importation of capital goods for the same period (TSN, August 24, 1999, p. 8).

Thus, the factual issue is now limited to whether or not Petitioner is entitled to the remaining claim for refund of unutilized input VAT paid on local goods and services for the period July 1, 1996 to September 31, 1996 and input VAT paid on importation of goods for the period July 1, 1996 to March 31, 1997, broken down as follows:

	Input VAT Claimed with DOF		
Period Covered	Local	Import	Total
07-01-96 to 09-31-96	P6,206,363.42	P 370,830.00	P 6,577,193.42
10-01-96 to 12-31-96	granted	220,523.00	220,523.00
01-01-97 to 03-31-97	granted	4,443,770.47	4,443,770.47
Totals	P6,206,363.42	P5,035,123.47	P11,241,486.89

Petitioner, due to the voluminous nature of evidence to be presented, availed of the services of an independent Certified Public Accountant pursuant to CTA Circular No. 1-95, as amended. As a consequence, Mr. Ruben R. Rubio, a Partner of SGV & Company was commissioned to verify the accuracy of Petitioner's summary of input taxes and export sales (TSN, February 9, 1999, pp. 5 to 7). Thereafter, three written reports were submitted stating the audit procedures performed with their corresponding findings (Exhs. S, S-1, EEE, EEE-1, FFF, and FFF-1).

In his final report, Mr. Rubio, attested to the following findings: (Exh. FFF)

I. ACCURARY OF THE SUMMARY OF INPUT TAXES

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> Out of the total input taxes amounting to P24,634,974.03 for the period covered by the claim [i.e., the third quarter (July to September) and fourth quarter (October to December) of 1996; and first quarter (January to March of 1997], we have verified only the amount of P11,241,486.47. We list down below the amounts of input taxes that we have not verified for each quarter covered by the claim:

Input Taxes Not Verified	
Third Quarter, 1996	P 84,993.63
Fourth Quarter, 1996	9,472,633.91
First Quarter, 1997	3,835,860.02
Total	P13,393,487.56

Findings and Observations:

Based on the procedures we performed, we present below our findings and observations on the input taxes we have verified.

Exceptions	Annex	Input Tax Claimed
Purchases of Services Not Supported By VAT Official Receipts	A	P 3,007.04
Purchases of Goods Supported by Non-Invoices Printed After July 31, 1991	B	11,630.89
Purchases of Goods Supported by VAT Invoices issued not in Company's name	C	126.00
VAT on importation of Goods Paid Before Third Quarter of 1996	D	4,271.00
Total		P19,034.93

II. INWARD REMITTANCE OF EXPORT SALES PROCEEDS

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We have verified only export sales amounting to P2,564,287,505.30 broken down as follows

Export Sales Verified	
Third Quarter, 1996	P1,146,405,356.11
First Quarter, 1997	1,417,882,149.19
Total	P2,564,287,505.30

We have not verified export sales amounting to P1,211,992,224.06 broken down as follows:

Export Sales Not Verified	
Fourth Quarter, 1996	P1,211,193,420.93
First Quarter, 1997	798,803.13
Total	P1,211,992,224.06

xxx xxx xxx

The aforementioned findings show that the commissioned independent CPA re-computed the properly supported input taxes allocable to zero-rated sales which were not absorbed by the output tax for the period involved. For the third quarter of 1996, the proper input tax still unutilized amounted to P6,555,117.34; nothing for the fourth quarter of 1996 since the accuracy of the Summary of Export Sales was not verified; and for the first quarter of 1997 the sum of unutilized input tax amounted to P4,439,622.36.

The Court, after a further review and verification of the findings embodied in the aforementioned final report together with the documentary exhibits presented, makes the following observations:

1. The findings arrived at by the commissioned independent CPA is found to be in order;

2. The verification of unutilized input VAT for the first quarter of 1997 by SGV & Co. pertains only to VAT on importation of goods;

3. The issuance of tax credit certificates for local VAT for the fourth quarter of 1996 and first quarter of 1997 as manifested by Petitioner's witness, Ms. Alkuino, have no bearing because the verification of the accuracy of input taxes herein claimed refers only to those input taxes for the period July 1, 1996 to March 31, 1997 which were not issued tax credit certificates; and

4. The remaining input VAT on domestic purchases of goods and services and importation of goods for the quarter ended September 31, 1996, and input taxes [illegible] importation of goods for the quarters ended December 31, 1996 and March [illegible] 1997 [illegible] not been applied nor utilized against the output tax liability of Petitioner in [illegible] succeeding VAT taxable quarters (Exhs. N, N-1, O, P, P-1, Q, R).

In conclusion, We find the computations of the independent CPA commendable and are hereby adopted, to wit:

Third Quarter of 1996

Total Input Taxes Claimed as Refund (DOF)		P6,662,186.63	
Less: Input Taxes Not Verified		84,993.63	
Input Taxes Verified		P6,557,193.00	
Less: Exceptions Noted		19,034.93	
Properly Supported Input Taxes		P6,558,158.07	
Sales			
Subject to 10% VAT (Per VAT Return)			P 30,407.32
Export Sales		P1,146,405,356.11	
Add(Less): Exceptions Noted			
Export Sales Not Supported by Export Sales Invoices and Airway Bills	(P221,026.35)		
Understatement in Export Sales	32,376.87	(188,649.48)	
Export Sales After Exceptions			1,146,216,706.63
Total Sales			P1,146,247,113.95
Properly Supported Input Taxes			
Allocable to Sales Subject to 10% VAT			P 173.97*
Allocable to Sales Subject to 0% VAT			6,557,984.10**
Total Input Taxes			P 6,558,158.07
Output Taxes			P 3,040.73***
Less: Input Taxes Allocable to Sales Subject to 0% VAT			173.97*
Unabsorbed Output Taxes			P 2,866.76
Less: Input Taxes Allocable to sales Subject to 0% VAT			6,557,984.10**
Properly Supported Input taxes allocable to Sales Subject to 0% VAT Not Absorbed by Output Taxes			P 6,555,117.34

First Quarter of 1997

Total Input Taxes Claimed as Refund (DOF)		P8,279,630.49	
Less: Input Taxes Not Verified		3,835,860.02	
Input Taxes Verified		P4,443,770.47	
Less: Exceptions Noted		-	
Properly Supported Input Taxes		P4,443,770.47	
Sales			
Subject to 10% VAT (Per VAT Return)			P 41,481[illegible]
Export Sales		P1,418,680,952.32	
Less: Export Sales Not Yet Verified		798,803.13	
Export Sales Verified		P1,417,882,149.19	
Less: Exceptions Noted			
Export Sales Not Supported by Export Sales Invoices and Airway Bills		2,579,304.20	
Export Sales After Exceptions			1,415,302,844.99
Total Sales			P1,415,344,326.09
Properly Supported Input Taxes			

Allocable to Sales Subject to 10% VAT	P	130.24*
Allocable to Sales Subject to 0% VAT		4,443,640.23**
Total Input Taxes	P	4,443,770.47
Output Taxes	P	4,148.11***
Less: Input Taxes Allocable to Sales Subject to 0% VAT		130.24*
Unabsorbed Output Taxes	P	4,017.87
Less: Input Taxes Allocable to sales Subject to 0% VAT		4,443,640.23**
Properly Supported Input taxes allocable to Sales Subject to 0% VAT Not Absorbed by Output Taxes	P	4,439,622.36

*Computed using the following formula:

$$\text{Properly Supported Input taxes} \times \frac{\text{Sales Subject to 10\% VAT}}{\text{Total Sales}}$$

**Computed using the following formula:

$$\text{Properly Supported Input taxes} \times \frac{\text{Export Sales After Exceptions}}{\text{Total Sales}}$$

***Computed using the following formula:

Output Taxes = Sales Subject to 10% VAT (exclusive of VAT) x 10%

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby *PARTIALLY GRANTED*. Petitioner's claim for refund for the fourth quarter of 1996 is hereby **DENIED** due to insufficiency of evidence while Petitioner's claims for refund for the third quarter of 1996 and first quarter of 1997 are **GRANTED**. Respondent is hereby **ORDERED to REFUND or in the alternative to ISSUE A TAX CREDIT CERTIFICATE** in the total amount of Ten Million Nine Hundred Ninety Four Thousand Seven Hundred Thirty Nine and Seventy Centavos (P10, 994, 739.70) consisting of P6,555,117,34, representing unutilized input VAT on domestic purchases of goods and services and on importation of goods for July 1, 1996 to September 31, 1996 and P4,439,622.36, representing unutilized input VAT on importation of goods for the first quarter of 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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