REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLACER DOME TECHNICAL SERVICES (Philippines), INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 5685**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 19 2002

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DECISION

This is a petition for review involving a claim for refund/tax credit of Petitioner Place Dome Technical Services (Philippines), Inc. in the amount of P42,837,932.61 allegedly representing the unutilized input VAT payments which are directly attributable to zero-rated sales for the period covering September 23, 1996 to December 31, 1997.

The antecedent facts, as culled from the records of the case are as follows:

Petitioner is a corporation duly organized and registered with the Securities and Exchange Commission with principal office at the 5th floor, Madrigal Building, Ayala Avenue, Makati City, engaged in the business of rendering, among others, technical and consultancy services in relation to mining, industrial, commercial and other projects, as

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stated in its Articles of Incorporation *(Joint Stipulation of Facts, Item No. 1, CTA records, p. 284).*

Petitioner is registered as a VAT taxpayer effective September 23, 1996 and was issued the corresponding VAT Registration Certificate under RDO Control No. 96-500-004773 *(Joint Stipulation of Facts, Item No. 2, CTA records, p. 285).*

On November 15, 1996, Petitioner (PDTS-Philippines) entered into a contract, designated as "Implementation Agreement" (Exhibits FF to FF-2), with Placer Dome Technical Services Limited (PDTS-Vancouver, for brevity), a non-resident foreign corporation incorporated under the laws of British Columbia, Canada, with principal office at 1600-1055 Dunsmuir Street, Vancouver, British Columbia, Canada, under which Petitioner would render various technical services for PDTS-Vancouver.

The Implementation Agreement was entered into as a result of an incident that started March 24, 1996, when mine tailings from the Taipan Pit escaped through Makulapnit Tunnel and Boac Rivers resulting to the cessation of mining and milling operations at the San Antonio Mines thereby resulting in potential damage to said rivers and immediate environment. Marcopper Mining Corporation (Marcopper) owns and operates the San Antonio Mines in Marinduque.

In order to contain the damage and prevent further spread of the tailing leak, Placer Dome, Inc., being the owner of 39.9% of Marcopper Mining Corporation, through a subsidiary, undertook to perform the clean-up and rehabilitation of the Makalupnit and Boac Rivers. Placer Dome then engaged PDTS-Vancouver to carry out the project as evidenced by the Technical Services Agreement (Exhibits EE to EE-2). PDTS-Vancouver, in turn, engaged the services of Petitioner (PDTS-Philippines) to undertake the implementation of the Project as it has the expertise to provide said implementation services in the Philippines. Considering the potentially significant damage to the environment that may result from the tailing leak, the parties agreed to require Petitioner to immediately undertake the implementation services. Thus, upon signing of the Implementation Agreement on November 15, 1996, the parties stipulated that all Implementation Services rendered by Petitioner even prior to the signing thereof, shall be deemed to have been provided pursuant to said Implementation Agreement.

Under the Implementation Agreement, all payments by PDTS-Vancouver to Petitioner would be in US Dollars and would cover all costs incurred by the latter in the performance of the Implementation Services inclusive of the service fee equivalent to one percent (1%) of such cost.

Petitioner duly filed its quarterly VAT returns for the last two quarters of 1996 and four quarters of 1997 (Exhibits E to I & AAAA) but simultaneously amended the same on August 10, 1998 (Exhibits J to O, inclusive). In the amended returns, Petitioner declared the following:

Exh	Period Covered	Zero-Rated Sales	Taxable Sales	Output VAT	Input VAT	Excess Input VAT
J	3rd qtr '96	P 21,687,763.60			P 3,768,517.51	P 3,768,517.51
K	4th qtr '96	107,655,522.33			17,238,606.46	17,238,606.46
L	1st qtr '97	79,537,556.30			5,718,750.41	5,718,750.41
M	2nd qtr '97	90,817,628.66	P1,135,382.70	P 113,538.27	6,848,431.83	6,734,893.56

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N	3rd qtr '97	89,160,882.00	336,672.10	33,667.21	4,091,495.10	4,057,827.89
O	4th qtr '97	29,242,062.85	303,229.00	30,322.90	5,349,660.67	5,319,337.77
		P 418,101,415.74	P1,775,283.80	P 177,528.38	P 43,015,461.98	P 42,837,933.60

Petitioner alleges that since the revenues it derived from services rendered to PDTS-Vancouver were paid for in foreign currency inwardly remitted to the Philippines, the same qualify as zero-rated sales under Section 102(b)(2) [now 108(B)(2)] of the Tax Code, as amended. Thus, Petitioner believed that it is entitled to a refund of the input VAT payments directly attributable to such sales pursuant to Section 106(a) [now 112(A)] of the Tax Code, as amended.

Accordingly, on September 11, 1998, Petitioner filed an administrative claim for refund corresponding to the reported total input VAT payments of P43,015,461.98 reflected in its quarterly VAT returns for the 3rd quarter of 1996 to the 4th quarter of 1997 *(CTA records, page 16 and Joint Stipulation of Facts, par. 4, p. 285)*. The inaction of the Respondent prompted the Petitioner to elevate the matter to this Court on October 20, 1998 in order to toll the running of the 2-year prescriptive period to appeal. In the said Petition for Review, Petitioner prayed for the refund of the reported excess input VAT of P 42,837,933.60.

In Answer to the Petition for Review, Respondent raised the following Special and Affirmative Defenses, to wit:

> "5. Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

6. Taxes are presumed to have been collected in accordance with law. Hence, Petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected.
7. Petitioner must prove the allegations supporting its entitlement to a refund.
8. Petitioner must show that it has complied with the provisions of Section 204 (c) and 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 the tax.
9. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation."

In order to bolster its claim for refund, Petitioner formally offered the following documents as its evidence:

Exhibits	Description
E to E-2, F to F-2, J to J-5, K to K-7	Original and Amended 3rd and 4th Quarter VAT Returns for the year 1996
G to G-2, H to H-2, I to I-2, AAAA to AAAA-2, L to L-7, M to M-7, N to N-7	Original and Amended 1st, 2nd, 3rd & 4th Quarter VAT Returns for the year 1997
P to P-3	Amended 1st Quarter VAT Return for 1998
Q to Q-2 Y to Y-2	Partial/Completed Input VAT Certification and Exhibits issued by Joaquin Cunanan & Co.
R to R-1, S	Summary/ Schedule of Input Taxes paid for the period September 23, 1996 to December 31, 1997
T to T-2	Summary of Exclusions

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U, V	Schedule of Purchases covered by non-VAT and VAT invoices
W, BBBB	Summary List of Sales
X	Procedures adopted by the auditing firm in verifying the correctness of the amount claimed
Z-1 to Z-5,423	Photocopies of the numerous supplier's sales invoices and official receipts for domestic purchases
BB-1 to BB-40, CC-1 to CC-22	Pre-marked photocopies of invoices issued by Petitioner in favor of Placer Dome, Vancouver and for its local sales
DD to DD-42	Certifications and Credit Advice issued By Citibank
EE to EE-2	Technical Services Agreement executed by and between PDI and PDTS, Ltd
FF to FF-2	Implementation Agreement between PDTS, Ltd. and the Petitioner
GG to GG-1, HH to HH-1, II to II-1	Environmental Reclamation Agreement, Tunnel and River Contract, Makalupnit Siltation Dam Agreement (respectively) executed by and between Marcopper and Petitioner
JJ, KK	Document showing request of cash by PDTS- Vancouver to fund Petitioner's activities
LL	Letter of PDTS-Vancouver informing Petitioner of money remittance
OO to YY	Official Receipts issued by SCI Transport and Sta. Clara Intl. Corp.
ZZ to KKK	Check Vouchers prepared by Petitioner in Favor of SCI transport

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LLL to ZZZ	Billings made by SCI Transport in favor of Petitioner

This Court is now tasked to resolve the following issues jointly stipulated by the Parties, thus:

1. Whether Petitioner's sale of services qualify as a zero-rated transaction;

2. Whether Petitioner can properly substantiate its entitlement to a refund of the VAT input taxes arising from its domestic purchases of taxable goods and services from September 23, 1996 to December 31, 1997.

Anent the first issue, we rule in the affirmative.

Quoted hereunder is the pertinent provision of the Tax Code, which specifically enumerates transactions subject to zero percent (0%) rate, thus:

> "**Section 102.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties. –***
>
> (a) x x x
>
> (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) <u>Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and</u>

accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas." (Underlining supplied)

Explicitly mentioned from the afore-quoted provision are the conditions to be complied with in order for the sales of service to be considered zero-rated and they are as follows:

1. That the taxpayer must be a VAT-registered person;
2. That the services are paid for in acceptable foreign currency; and
3. That the payment is accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

There is no question as to Petitioner's status as a VAT registered entity (since September 23, 1996) as this was jointly stipulated and admitted by the Parties. (Joint Stipulation of Facts, par. 2, CTA records, pp.134.) The Petitioner likewise adequately established the fact of payment in acceptable foreign currency and the inward remittance thereof in accordance with BSP rules and regulations. Records show that for the period of September 23, 1996 to December 31, 1997, Petitioner actually derived revenues from rendering services on the Marcopper Clean Up Project in the total amount of US$27,544,707.00 with the peso equivalent of P758,216,698.36 as evidenced by the various sales invoices issued by Petitioner to Placer Dome Technical Services Limited, Vancouver, Canada *(Exhibits BB-1 to BB-3, BB-5, BB-6, BB-8, BB-10, BB-14, BB-21, BB-29 & BB-38 to BB-40)* which were summarized in Exhibit BBBB. The said services

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fall squarely under the category of those referred to in *Section 102(b)(2) [now 108(B)(2)]* of the Tax Code, as above-quoted.

However, out of Petitioner's total revenue of US$27,544,707.00 (P758,216,698.36), only the amount of US$14,750,473.00 with the peso equivalent of P396,413,652.14 was inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas as shown by the Citibank, N.A, certification and bank credit advices *(Exhibits DD to DD-42)*. Thus, only the amount of US$14,750,473.00 (P396,413,652.14) qualifies for zero-rating pursuant to Section 102(b)(2) [now 108(B)(2)] of the Tax Code, as amended.

Since Petitioner's sales of services of P396,413,652.14 (US$14,750,473.00) qualify as zero-rated under Section 102(b)(2) [now 112(B)(2)] of the Tax Code, as amended, it is not liable to pay output tax on such sales. Consequently, Petitioner can claim tax credit/refund of the input VAT it paid on domestic purchases of taxable goods or services, which are directly attributable to such zero-rated sales as provided under Section 106(a) [now 112(A)] of the Tax Code, as amended, thus:

> ***"Section 106. Refunds or tax credits of creditable input tax.*** – (a) 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 100 (a) (2) (A) (i), (ii) and (b) and Section 102 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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 attributable to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

It is significant to note at this point that in its memorandum, Respondent avers that in reality, there was really no inward remittance of dollars to the Philippines. It is Respondent's belief that the money that would be paid by Marcopper to PDI under the Environmental Reclamation Agreement and which goes out of the country would be the same money coming inwardly in the form of fees and reimbursements to herein Petitioner through PDTS-Vancouver. Thus, according to Respondent, the government gained nothing in terms of encouraging inward remittance of dollars, which is one of the purposes in zero-rating the transaction, because the money that went out of the country (through Marcopper) was the same money that came in (through PDTS-Vancouver).

Respondent's contentions lack merit. It bears stressing that in availing of the zero-rating incentive provided by law for foreign currency remittance in our country, it is sufficient that foreign currency inwardly remitted in our economy. We do not give much ado as to where the money is sourced for as long as the foreign currency remittance in our country is duly accounted for in accordance with the rules and regulations of the BSP.

Apparently, we cannot rely on mere speculation or mere conjectures that the money inwardly remitted in our country is the same money that went outwards.

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Proceeding now to the second issue besetting the case at bar, We rule to partially grant the same. In order to be entitled to a refund of input VAT payments directly attributable to zero-rated sales, it is imperative for the Petitioner to prove the following, thus:

1.) that the claimed input VAT payments are duly supported by VAT invoices and/or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95;
2.) that the claimed input VAT payments are directly attributable to zero-rated sales;
3.) that the claimed input VAT payments were not applied against any output VAT liability; and
4.) that the claim for refund was filed within the two-year prescriptive period.

A thorough examination of the records submitted to this Court would reveal that indeed Petitioner has substantially complied with the substantiation requirements. It must be noted that due to the voluminous documents involved in this case, the services of an independent accounting firm was engaged to conduct an audit and verification of the documents pertinent to the input VAT claimed for the period covered. The various suppliers' invoices and official receipts (Exhibits Z-1 to Z-5423) which were examined by the commissioned auditing firm, Joaquin Cunanan & Co, show that Petitioner incurred/paid input taxes in the total amount of P43,015,461.98 (Exhibits K to P). However, in its report dated August 19, 1999 (Exhibit Q), Joaquin Cunanan & Co. noted that the input taxes of P 199,604.61 were not properly supported by VAT invoices and/or

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official receipts. A further verification by this Court of the said documents disclosed that aside from the exceptions of P199,604.61 noted by Joaquin Cunanan & Co., the amount of P9,781,705.54 (see Annex A) failed to meet the invoicing requirements under Section 4.104-5 of Revenue Regulations No. 7-95. Hence only the input taxes of P33,034,151.83 (P43,015,461.98 less P199,604.61 and P9,781,705.54) were properly supported by VAT invoices and/or official receipts.

Nevertheless, not all of the allowable input VAT of P33,034,151.83 can be directly attributed to Petitioner's zero-rated sales of P396,413,652.14 (US$14,750,473.00). As can be seen from Petitioner's sales invoices for the subject period (Exhibits BB-4, BB-7, BB-9, BB-11 to BB-13, BB-15 to BB-20, BB-22 to BB-28, BB30 to BB-35 & BB-37) which were summarized in Exhibit BBBB, Petitioner had other sales of P1,974,785.69 with the related output VAT of P177,237.65 derived from Petitioner's sale of surplus materials/equipment at the completion of the project. The allowable input VAT of P33,034,151.83 shall be reduced by the said output VAT of P177,237.65. Likewise, the input VAT of P15,678,541.06 pertaining to Petitioner's sales of services of P361,803,046.22 (P758,216,698.36 less P396,413,652.14) without the corresponding foreign currency remittances shall be deducted from the amount of P33,034,151.83. Hence, only the resulting input VAT of P17,178,373.12 can be directly attributed to Petitioner's zero-rated sales of services computed as follows:

Input VAT per Return

Exh.	Period Covered	
K	3rd qtr '96	P 3,768,517.51

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	L	4th qtr '96	17,238,606.46	
	M	1st qtr '97	5,718,750.41	
	N	2nd qtr '97	6,848,431.83	
	O	3rd qtr '97	4,091,495.10	
	P	4th qtr '97	5,349,660.67	P 43,015,461.98
Less:	Input VAT w/o proper VAT invoices/official receipts			
	1. Per report of Joaquin Cunanan & Co. (Exhibit Q)		P 199,604.61	
	2. Per Court's further verification (Annex A)		9,781,705.54	9,981,310.15
Allowable Input VAT				P 33,034,151.83
Less:	Output VAT related to Petitioner's Other Sales (Exhibit BBBB)			177,237.65
Input VAT related to Petitioner's sales of services				P 32,856,914.18
Less:	Input VAT related to Petitioner's sales of services w/o forex remittances (P361,803,046.22/P758,216,698.36 X P32,856,914.18)			15,678,541.06
Input VAT attributable to Petitioner's zero-rated sales of services				P 17,178,373.12

Respondent, in his memorandum alleged that Petitioner cannot claim the refund of input VAT on its purchase of taxable goods and services since Petitioner was reimbursed by PDTS-Canada of all costs incurred. Thus, in effect the input VAT declared by Petitioner in its purchase of machinery, equipment and supplies is actually the expense not of the Petitioner but of PDTS-Canada.

We are not convinced.

The provision in the implementation agreement which states that PDTS-Vancouver shall reimburse the Petitioner the costs plus one percent of the cost as service fees does not necessarily mean that Petitioner himself did not incur any expense of its own. Contrary to the assertion of Respondent, said provision in the agreement is merely used for billing purposes in order to determine the basis for computing the 1% service fee as well as the aggregate amount to be paid by PDTS-Canada for the services rendered by Petitioner. Simply put, the cost incurred by Petitioner plus the 1% service fee as per agreement is merely billed to PDTS-Canada who in the first place is bound to pay Petitioner for the service it rendered. Furthermore, as attested to by Petitioner's witness (TSN, pages 35-37, November 11, 1999), these so-called reimbursements (or the total amount paid by PDTS-Canada) were all reflected in Petitioner's financial statement and were all declared in the various VAT returns filed by Petitioner, as gross receipts or gross income.

Going back to the other requirements as above stated, Petitioner likewise proved that the claimed input VAT for the period of September 23, 1996 to December 31, 1997 were not carried/applied in the succeeding first quarter of 1998. This is evidenced by the 1998 amended first quarterly VAT return (Exhibits P & P-3).

Finally, it was established that Petitioner complied with the two-year period prescribed for the filing of its administrative and judicial claims for refund. As ruled by this Court in a Resolution dated July 20, 1998 in the case of ***Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5296***, the reckoning of the two year period provided under Section 106(a) in relation to Sections 110 and 230 of the Tax Code shall be from the date of filing of the corresponding quarterly VAT returns. Thus, counting from October 20, 1996, the last day prescribed by law for the filing of the 1996 third quarterly VAT return, both the

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administrative and judicial claims for refund filed on September 11, 1998 and October 20, 1998 fall within the two-year prescriptive period.

In view of the above findings, this Court so recommends that Petitioner's claim for refund of input VAT payments directly attributable to zero-rated sales of services for the period September 23, 1996 to December 31, 1997 be granted but in a reduced amount of P17,178,373.12.

WHEREFORE, in view of the foregoing, the Petition for Review is **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or issue a **TAX CREDIT CERTIFICATE** in favor of the Petitioner the reduced amount of P17,178,373.12 representing the unutilized input VAT payments for the period September 23, 1996 to December 31, 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

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

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