REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

AICHI FORGING COMPANY OF ASIA, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7065

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JAN 04 2008

1:00 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 112 (A) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), *as amended*, petitioner filed a claim for refund of its creditable input VAT attributable to its zero-rated sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. Failure to show proof of proper documentation is fatal to one's claim for refund or credit.

THE CASE

This is a Petition for Review filed by Aichi Forging Company of Asia, Inc. (hereafter "petitioner") praying for a refund in the aggregate amount of P3,891,123.82, representing the VAT input taxes paid or incurred on its importation of goods and domestic purchases of goods and services attributable to its zero rated sales for the period July 1, 2002 to September 30, 2002.

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Barrio Pulong Sta. Cruz, Sta. Rosa, Laguna.

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected or of VAT input taxes attributed to zero-rated revenue, with office address at the BIR National Office Building, Diliman, Quezon City.

On May 19, 1995, petitioner was duly registered with the Bureau of Internal Revenue as a value-added tax entity, pursuant to *Section 107 (now Section 236) of the Tax Code*. Consequently, it was issued Certificates of Registration, with RDO Control No. 95-570-000481 (BIR Form No. 1556) and OCN IRC 0000148499 (BIR Form No. 2303).

Petitioner also registered its products, "close impression due steel forgings" and "tool and dies", with the Board of Investments (BOI) as a pioneer status, enjoying the privileges granted by the BOI. As such, it was issued Certificates of Registration Nos. 74-336, DP-92-057 & EP 95-132 by the Board of Investments.

For the period covering July 1, 2002 to September 30, 2002, petitioner allegedly generated and recorded zero-rated sales in the amount of P131,791,399.00. Said amount was paid for to petitioner in acceptable foreign currency and was inwardly remitted, in accordance with existing regulations of the Central Bank of the Philippines, pursuant to Section 106 (A) (2) (a) (1), (2) and (3) of the Tax Code.

Petitioner purportedly incurred and paid VAT input taxes amounting to P3,912,088.14 from domestic purchases of goods, services, capital goods and from importation of goods and capital goods which were all attributable to its zero rated sales. However, for purposes of the application for refund filed with the Department of Finance One Stop Shop Inter Agency Tax Credit and Duty Drawback Center, petitioner was able to substantiate only the amount of P3,891,123.82.

On September 30, 2004, petitioner filed a claim for refund in the total amount of P3,891,123.82 with respondent, through the Department of Finance.

For failure of the respondent to act on the request and in order to toll the running of the two-year prescriptive period, on September 30, 2004, petitioner filed the instant Petition for Review.

In his Answer, respondent alleged by way of special and affirmative defenses that petitioner's alleged claim for refund is subject to administrative investigation by the Bureau; petitioner must prove that it paid VAT input taxes for the period in question; petitioner must prove that its sales are export sales contemplated under *Sections 106 (A) (2) (a) and 108 (B) (1) of the Tax Code of 1997*; petitioner must prove that the claim was filed within the two year period prescribed in *Section 229 of the Tax Code*; in an action fore refund, 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; and claims for refund are construed

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strictly against the claimant for the same partakes of the nature of exemption from taxation.

Petitioner presented Jesus B. Oliveros, Jr. and Ma. Wencita C. Salvador, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"QQ"*, inclusive of submarkings, which were all admitted by the Court.

On the other hand, respondent waived her right to present evidence and submitted the case for decision.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Considering that only petitioner filed its memorandum, the case was deemed submitted for decision on September 25, 2007.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

> WHETHER OR NOT PETITIONER INCURRED DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS IN THE AMOUNT OF PHP39,120,880.75 FOR THE PERIOD JULY 1, 2002 TO SEPTEMBER 30, 2002.

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II

WHETHER OR NOT THE ABOVE PURCHASES AND IMPORTATION WERE PAID BY PETITIONER IN THE COURSE OF TRADE AND BUSINESS AND ARE DULY SUPPORTED BY INVOICES AND/OR RECEIPTS SHOWING THE INFORMATION REQUIRED BY LAW.

III

WHETHER THE VAT INPUT TAXES ARE EXCESS UNUTILIZED INPUT VAT.

IV

WHETHER PETITIONER'S SALES ARE EXPORT SALES CONTEMPLATED UNDER SECTION 106 (A)(2)(a) OF THE TAX CODE.

V

WHETHER THE VAT INPUT TAXES ARE ATTRIBUTABLE TO THE ALLEGED EXPORT SALES.

VI

WHETHER PETITIONER'S CLAIM WAS FILED WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or the issuance of a tax credit certificate in the amount of P3,891,123.82, attributable to its zero-rated sales. *ael*

THE RULING OF THE COURT

The petition is partly meritorious.

Petitioner claims that as a registered value-added taxpayer it is qualified for zero-rating of its indirect export sales, pursuant to *Sections 106 (A) (2) (a) (i), (ii) and (iii) and 108 (B)(1)* of the *NIRC of 1997, as amended.* As such, it now claims the refund of unutilized input taxes incurred on its importation of goods and domestic purchases of goods and services for the period July 1, 2002 to September 30, 2002. The indirect export sales of the petitioner are not subject to 10% value-added tax but are zero-rated as these are sales to PEZA registered enterprise and are direct exports. The input taxes were paid by petitioner on its domestic purchases of goods and services and capital goods and importation of goods, which are necessary in the ordinary course of its trade and business, as manufacturer of all kinds of steel and steel by products, particularly but not limited to closed impression die steel forging and automotive steel parts. The finished products manufactured were directly exported or sold to PEZA registered enterprises which is tantamount to indirect export sales and directly exported as expressly provided in the Tax Code for 1997. Petitioner further claims that having been registered in accordance with the provisions of the Omnibus

Investments Code of 1981, it is entitled to the incentives provided thereon. Finally, petitioner avers that its claim for refund is supported by the testimonial and documentary evidence presented during the trial.

For a VAT registered entity whose sales are zero-rated, to validly claim a refund, *Section 112 (A)* of the *NIRC of 1997*, as amended, provides:

> "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 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: xxx"

Pursuant to the above provision, petitioner must comply with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

The Court finds that the first three requirements have been complied by petitioner.

With regard to the first requisite, the evidence presented by petitioner, such as the Sales Invoices (*Exhibits "II" to "II-262", "JJ" to "JJ-431", "KK" to "KK-394" and "LL"*) shows that it is engaged in sales which are zero-rated.

The second requisite has likewise been complied with. The Certificate of Registration with OCN 1RC0000148499 (*Exhibit "C"*) with the BIR proves that petitioner is a registered VAT taxpayer.

In compliance with the third requisite, petitioner filed its administrative claim for refund on September 30, 2004 (*Exhibit "N"*) and the present Petition for Review on September 30, 2004, both within the two (2) year prescriptive period from the close of the taxable quarter when the sales were made, which is from September 30, 2002.

As regards, the fourth requirement, the Court finds that there are some documents and claims of petitioner that are baseless and have not been satisfactorily substantiated.

A careful scrutiny of petitioner's Quarterly VAT Return for the third quarter of 2002 readily reveals a discrepancy in the amount claimed by petitioner herein. We agree with the findings of the independent CPA that in computing the input VAT available for refund, petitioner did not deduct the output VAT for sales subject to VAT in the amount of P610,984.20 *(Independent CPA's Report, Exhibit "MM")*.

It must be noted that as there is no output VAT imposed on zero-rated export sales, what the government reimburses or refunds to the claimant is the input VAT paid by such claimant on its purchases in the conduct of its business. Thus, there is a need for the input VAT paid to be substantiated by purchase invoices or official receipts. However, it is not only the export sales that should be proven, but also compliance with the requirements prescribed in *Section 110,* in relation to *Section 113* of the *NIRC of 1997*, as amended, and as further implemented by *Revenue Regulations No. 7-95.*

Section 110 of the *NIRC of 1997*, as amended, provides:

> " SEC.110. Tax Credits.-
>
> (A) Creditable Input Tax.-
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx
>
> (B) Excess Output or Input Tax.- If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-

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registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

xxx xxx."

While, *Section 113* of the same Code provides:

"SEC. 113.- Invoicing and Accounting Requirements for VAT-registered Persons.-

(A) Invoicing Requirements.- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

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Corollary thereto, *Section 4-108-1 of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations)* prescribes the following informations which must appear on the face of receipts or invoices issued for the sale of goods by all VAT-registered entities:

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"SEC. 4-108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of the seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the

> buyer and the duplicate to be retained by the seller as part of his accounting records."

The law is very clear. *Section 113* provides that "a VAT registered person shall, for every sale, issue a duly registered VAT invoice receipt for every sale transaction". Such VAT invoice or receipt must show the taxpayer's identification number, followed by the word "VAT", the BIR Authority to imprint or BIR permit marker and the word "zero-rated" imprinted on the invoice receipt covering a zero-rated sale.

Applying the applicable provisions of the law, We now proceed to the determination of the substantiation of petitioner's claim for refund.

After a careful review of the evidence on record, We adopt the findings of the Independent CPA in her Final Report, *Annex G* thereof, where she noted certain disallowable claims, for not being substantiated by sufficient documentary proofs which resulted to a discrepancy in the input VAT available for refund, to wit:

"Total exceptions noted during the examination of source documents:

Unsubstantiated amount of Input tax (Unlocated difference between the Schedules and Returns)	20,105.01	
Outside the period covered-local purchases and importation	2,669.94	
Name of payee is not indicated	1,303.68	
Official Receipts not available for examination	16,941.74	**41,020.37**"

In its Amended Quarterly VAT Return for the third quarter of 2002 *(Exhibit "L")*, petitioner declared that for the period covering July 1, 2002 to September 30, 2002, it generated and recorded zero rated export sales in the amount of P131,791,399.00.

To prove its alleged zero-rated export sales, petitioner presented in evidence the following documents:

1) Sales Invoices (*Exhibits "II" to "II-262", "JJ" to "JJ-431", "KK" to "KK-394" and "LL"*); and

2) Final Report of the Commissioned Independent CPA (*Exhibit "MM"*).

A careful perusal of the above-mentioned documents, particularly the Final Report of the Commissioned Independent CPA reveals that the sales entered into by petitioner from July 1, 2002 to September 30, 2002 were all export sales to PEZA registered entities; hence, are considered indirect export sales. In his Final Report, the independent CPA made the following findings with regard to petitioner's zero-rated sales (*Exhibit "MM"*):

> "It was noted that the amount of zero-rated sales and sales subject to 10% VAT were properly recorded in the books and reflected in the VAT declarations and returns filed with the BIR. Total sales of AICHI for the period covered by my examination is **P138,453,336.40** out of which **P6,109,763.40** is for the sales subject to VAT and **P132,160,058.44** for the zero-rated sales and **P183,514.50** is direct export sale. The total output VAT for the period covered by my examination is **P610,745.29** that is for the sales subject to 10% VAT.
>
> Zero-rated sales are sales to BOI and PEZA registered enterprises. AICHI's buyers for the zero-rated sales are the following companies:

	JULY	AUGUST	SEPTEMBER	TOTAL
Aichi Steel Corporation	-	-	368,659.44	368,659.44
Asian Transmission Corporation	15,098,897.00	28,523,640.60	24,088,004.00	67,710,541.60
Isuzu Autoparts Mfg Corp.	8,412,728.62	10,200,579.86	7,334,430.14	25,947,738.62
Juntech Corporation	19,000.00	-	-	19,000.00
Laguna Autoparts Mfg Corp	243,390.00	340,746.00	299,022.00	883,158.00
Nidec Copal-HT	-	111,366.50	11,699.00	123,065.50
Toyota Autoparts Phils., Corp	7,164,480.75	10,734,206.62	19,204,782.92	37,107,895.29
Total	30,938,496.37	49,910,539.58	51,311,022.50	132,160,058.45"

Based on the factual circumstances of the case, the applicable law is *Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended,* which provides:

> "SEC. 106. Value-added Tax on Sale of Goods or Properties.-
>
> (A) Rate and Base of Tax.-
> xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. – The term "export sales" means:
>
> xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws;
>
> xxx xxx."

Corollary thereto, *Article 23* in relation to *Article 77 (2)* of *Executive Order No. 226* (hereafter *"E.O. 226"*), otherwise known as the Omnibus Investments Code of 1987, provides that sales to registered

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zone enterprise shall be considered as export sales and the exporter shall be entitled to the benefits allowed by law for such transaction.

The evidence on record shows that petitioner made exportations to PEZA registered entities, which are considered a constructive exportations under *E.O. 226.* Therefore, applying the foregoing provisions to the case at bar, petitioner as a VAT-registered entity under *Section 106 (A)(2)(a)(5)* of the Tax Code, its sales or transactions are subject to VAT at 0% rate. Subject to the requirements prescribed in *Section 112 (A)* of the same Code, petitioner is therefore entitled to claim refund or issuance of a tax credit certificate for input VAT taxes attributable to its export sales.

In sum, petitioner has sufficiently proved that it is entitled to a refund or issuance of a tax credit certificate representing unutilized excess input VAT payments for the period July 1, 2002 to September 30, 2002, which are attributable to its zero-rated sales for the same period, but in the reduced amount of P3,239,119.25, computed as follows:

Amount of Claimed Input VAT	P	3,891,123.82
Less:		
Exceptions as found by the ICPA		41,020.37
Net Creditable Input VAT	P	3,850,103.45
Less:		
Output VAT Due		610,984.20
Excess Creditable Input VAT	**P**	**3,239,119.25**

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WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **THREE MILLION TWO HUNDRED THIRTY NINE THOUSAND ONE HUNDRED NINETEEN AND 25/100 PESOS** (P3,239,119.25), representing the unutilized input VAT incurred for the months of July to September 2002.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice