REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEAGATE TECHNOLOGY (PHILIPPINES),
Petitioner,

- versus -

C.T.A. CASE NO. 5999

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 23 2001

x - x

DECISION

The instant petition seeks the refund of P24,213,529.98 allegedly representing unutilized input value-added tax (VAT, for brevity) paid by Petitioner on its domestic purchases of taxable goods and services for the period October 1, 1997 to December 31, 1997.

The antecedent facts follow.

Petitioner is a resident foreign corporation duly registered with and licensed by the Securities and Exchange Commission to do business in the Philippines, with principal office address at the New Cebu Township One, Special Economic Zone, Barangay Cantao-an, Naga, Cebu. On June 6, 1997, it was duly registered with the Philippine Export Processing Zone Authority as an Ecozone Export Enterprise, pursuant to the provisions of Republic Act 7916, to engage in the manufacture of recording components primarily used in computers for export and was issued Certificate of Registration No. 97-

044 (Exh. A). It is likewise registered as a value-added tax entity and was issued a certificate of registration bearing RDO Control No. 97-083-000600-V dated April 2, 1997 (Exh. B).

On January 26, 1998, Petitioner filed with the Bureau of Internal Revenue (BIR) its 1997 fourth quarterly VAT return (Exh. F) which was subsequently amended on January 25, 1999 (Exh. F-1), showing total input VAT payments from October 1, 1997 to December 31, 1997 in the amount of P24,213,529.98. The payments were allegedly made on its domestic purchases of taxable goods and services amounting to P242,135,299.16, a significant portion of which Petitioner asserts to represent payments for building construction.

Due to a worldwide decrease in the demand for computer disk drives, the Board of Directors of Petitioner approved the complete shutdown and eventual disposal of the facility at its Philippine branch. Thus, even before it could start commercial operations in the country, Petitioner filed a notice of cessation of business with the PEZA on July 15, 1999.

On October 1, 1999, Petitioner filed with Revenue District Office No. 83 of the BIR, a letter-claim for the refund of the VAT input taxes it paid from October 1, 1997 to December 31, 1997 in the amount of P24,213,529.98 (Exh. C). Petitioner anchored its claim on Section 112 (c) of the 1997 Tax Code, in relation to Section 4.106-1 (d) of Revenue Regulations (RR) No. 7-95, as amended, to state:

"**Sec. 112**. ***Refunds or Tax Credits of Input Tax***.-

(C) *Cancellation of VAT Registration.* – A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes. xxx"

"**Sec. 4.106-1**. ***Refunds or tax credits of input tax.-***

(d) Any unused input taxes as of the date of retirement, change or cessation of status of a VAT-registered person shall be allowed as credit against any output tax resulting from such change of status and the balance, if any, shall, subject to the filing of an application within two (2) years from the date of retirement, change or cessation of status, be issued a tax credit certificate/refund."

In addition, Petitioner cited Section 112 (B) of the 1997 Tax Code in relation to Section 4.106-1 (b) of RR No. 7-95, thus:

"**Sec. 112.** ***Refunds or Tax Credits of Input Tax.-***

(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."

"**Sec. 4.106-1.** ***Refunds or tax credits of input tax.-***

(b) **Capital Goods**. – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

"Capital Goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.

As Respondent failed to act on Petitioner's claim for refund and the two-year prescriptive period for the filing of a judicial claim for refund was about to lapse, the instant petition was filed on January 20, 2000.

In his Answer filed on February 8, 2000, Respondent claimed by way of Special and Affirmative Defenses that:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P24,213,529.98 being claimed by petitioner as alleged VAT input taxes for the period 01 October 1997 to December 1997 was not properly documented;

6. In an action for 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/credit;

7. Petitioner must show that it has complied with the provisions of Section 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

That the instant Petition was timely filed is not disputed (p.41, CTA Records). Likewise, Respondent admitted that Petitioner is both a VAT-registered entity and a PEZA-registered export enterprise. Thus, to support its claim, Petitioner invokes Section

112 (B) of the 1997 Tax Code in relation to Section 4-106-1(b) of RR No. 7-95, *hereinbefore quoted*, which allows the 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. Respondent, however, counters Petitioner's argument by invoking Section 24 of RA 7916, otherwise known as "The Special Economic Zone Act," which provides in part:

> "**SEC. 24**. *Exemption from Taxes Under the National Internal Revenue Code*. – Any provision of existing laws, rules and regulations to the contrary withstanding, no taxes, local and national, shall be imposed on business establishments operating within the *ECOZONE*. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the *ECOZONE* shall be remitted to the national government x x x"

Respondent alleges that Petitioner, being an ECOZONE or PEZA-registered enterprise, is not subject to VAT under the aforementioned section of RA 7916. And since Petitioner's business is not subject to VAT, the capital goods it purchased are considered not used in VAT taxable business, thus, it is not entitled to the refund of input taxes on such capital goods pursuant to Section 4.106-1 of RR 7-95, above-quoted.

The issues, therefore, We are tasked to resolve are:

1. Whether or not Petitioner's PEZA-registered business is subject to VAT; and

2. If in the affirmative, whether or not Petitioner was able to substantiate its claim for refund in the amount of P24,213,529.98.

165 528

The first issue has already been addressed by this Court through a resolution promulgated on September 20, 2000 in CTA Case No. 5921, involving the same parties. In said resolution, this Court ruled:

> "Respondent is correct in arguing that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from payment of the VAT pursuant to the provisions of Section 24 of Republic Act No. 7916, to quote:
>
> > "*Section 24. Exemption from Taxes Under the National Internal Revenue Code.* – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government x x x." Underlining supplied.
>
> However, We do not agree that the aforequoted law is applicable to the case at bar. Section 23 of Republic Act No. 7916 provides:
>
> > "*Section 23. Fiscal Incentives.* – Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, **or** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987."
>
> Under the aforementioned law, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, that which is provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned, which is in lieu of national and local taxes and second, as that provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 or 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However if an ecozone enterprise opted for the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes

including the value-added tax. These were explicitly elucidated by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99.

The records of the case convince Us that Petitioner availed of the fiscal incentives under Executive Order No. 226 because of the fact that Petitioner is a VAT registered entity with Certificate of Registration RDO Control No. 97-083-000600-V duly issued by Respondent's Assistant Revenue District Officer, Ms. Gloria D. Decierdo, for and in behalf of Mr. Nieto A. Racho, Revenue District Officer, RDO No. 83, Dalisay, Cebu (Exh. B)."

We proceed to the issue on substantiation.

In order for Petitioner to be entitled to a refund of unutilized input VAT paid on capital goods, it must be able to prove that:

1.) it is a VAT registered entity;

2.) it paid input VAT on capital goods purchased;

3.) its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;

4.) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

5.) the administrative and judicial claims for refund were filed within the two-year prescriptive period.

The first and fifth requirements were admitted by Respondent (pp. 32 &41, CTA Records). We, therefore, proceed to the rest of the requirements laid down.

The various suppliers' invoices/official receipts and payment vouchers (Exhs. H-1 to H-5A, inclusive) clearly show that from October 1, 1997 to December 31, 1997, Petitioner paid input taxes on purchases related to the construction of its plant and

530 167

building which can be classified as capital goods as defined in Section 4.106-1(b) of Revenue Regulations No. 7-95. The "Summary of Input Taxes" submitted by Petitioner for the fourth quarter of 1997 (Exh. H) were substantiated by VAT invoices or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95.

However, this Court finds Petitioner to be entitled only to the amount of P15,741,076.68 for the latter failed to submit the invoice issued by Western Philippine Corporation to herein Petitioner with serial number 0256 dated September 10, 1997, amounting to P8,472,453.30. Although Petitioner submitted an official receipt from Western Philippine Corporation with serial no. 285 dated October 17, 1997 (Exh. H-2) in support of the said input tax of P8,472,453.30, the same cannot be considered as a valid VAT official receipt because it bore the old TAN/VAT numbers and not the new TIN-V/VAT number. In sum, only the claimed input taxes of P15,741,076.68 (P24,213,529.98 less P8,472,453.30) were supported by valid VAT invoices or official receipts.

The claimed input taxes of P24,213,529.98 were likewise not applied against any output VAT liability as shown in Petitioner's amended quarterly VAT returns from the fourth quarter of 1997 to the second quarter of 1999 (Exhs. F-1, K-1, N-1, Q, T-1,W-1, & Z-1),1999 third quarterly VAT return (Exh. CC) and October & November 1999 Monthly VAT Declarations (Exhs. DD & EE). Also, the claimed input taxes of P24,213,529.98 were included in the total input taxes of P52,582,756.36 deducted as "Any Refund/TCC Claimed" from the "Total Available Input Taxes" of P52,638,925.84 resulting to an amount of P56,169.48 "Excess Input Taxes" (Exh,. DD-1) reflected in Petitioner's

October 1999 Monthly VAT Declaration (Exh. DD). Verily, Petitioner did not carry-over the claimed input taxes of P24,213,529.98 in its November 1999 Monthly VAT Declaration (Exh. EE).

WHEREFORE, in the light of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of P15,741,076.68 representing input value added tax paid by Petitioner on its capital goods for the period October 1, 1997 to December 31, 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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