REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KBP REAL ESTATE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 6035

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 15 2002

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DECISION

This is a judicial claim for refund of unutilized input value-added tax in the amount of P28,048,482.00 paid by the petitioner on its purchase of a parcel of land in the first quarter of 1998.

Petitioner is a domestic corporation primarily engaged in the leasing of real property.

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Certificate of Registration No. 97-049-008335 and Taxpayer Identification Number 049-005-029-427-VAT (Par. 3, Joint Stipulation of Facts).

On March 20, 1998, petitioner purchased a parcel of land from Lima Land, Inc., a domestic corporation, at a cost of US$7,434,000.00 plus 10% VAT amounting to US$743,400.00 or a total of P280,484,482.00 based on the peso-dollar exchange rate at that time of P37.73 to US$1.00 (Exhibits I & H).

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Consequently, petitioner filed on May 29, 1998 its VAT return with the BIR for the first quarter of 1998 (Exhibit A) reflecting the amount of P280,484,820.00 as the purchase price of the aforesaid piece of land and the amount of P28,048,482.00 as the input VAT paid on the said transaction.

Petitioner alleges that it had no VAT taxable sales for the same period. Thus, the input VAT paid was not utilized against any output VAT liability. Accordingly, on October 5, 1998, petitioner filed a written claim with the BIR for the refund of the unutilized input VAT of P28,048,482.00 (Annex A, Petition for Review).

Inasmuch as the respondent had failed to grant the refund so requested by the petitioner and considering further that the two-year prescriptive period within which to file a claim with this Court was about to expire, petitioner was constrained to file the instant petition on March 30, 2000.

Respondent, in his Answer filed through registered mail on May 24, 2000, raised the following Special and Affirmative Defenses, to wit:

> "4. Pursuant to Section 106 of the Tax Code, every sale, barter or exchange of goods or properties is subject to value added tax equivalent to 10% of the gross selling price, the term "goods or properties" includes real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;
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> 5. Petitioner failed to show that the land purchased is used in VAT-taxable business;
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> 6. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
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> 7. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;

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8. One who claim to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute;

9. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

10. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code; and

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

Petitioner submitted as documentary evidence its quarterly VAT returns (Exhibits A, B, C, D, F, G), sales invoice (Exhibit H) and Contract to Sell (Exhibit I). It likewise presented witnesses to identify the said documents.

Respondent, on the other hand, submitted the case for decision based on the records and pleadings without filing a memorandum (pp. 110 & 129, CTA records).

The controversial issues elevated for our resolution are:

(1) Whether or not petitioner did incur input taxes in the amount of P28,048,482.00 for the first quarter of 1998;

(2) Whether or not the input taxes incurred by the petitioner for the first quarter of 1998 are properly substantiated by official receipts and invoices;

(3) Whether or not the input taxes incurred by the petitioner generated any sales transactions subject to VAT for the period January 1 to December 31, 1998;

(4) Whether or not the input taxes incurred by the petitioner for the year 1998 have been carried over to or remained unutilized in 1999; and

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(5) Whether or not petitioner is entitled to a tax refund in the amount of P28,048,482.00 representing the amount of input taxes paid on capital goods for the period January 1 to December 31, 1998.

Section 106 of the Tax Code, as amended, provides in part:

"**SEC. 106**. *Value-Added Tax on Sale of Goods or Properties*. –

"(A) *Rate and Base of Tax*. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

"(1) The term '*goods or properties*' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

"(a) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;

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"The term 'gross selling price' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."

Thus, on March 20, 1998, when petitioner purchased a parcel of land from Lima Land, Inc. (Exhibit I), it paid the amount of US$8,177,400.00 inclusive of the 10% VAT amounting to US$743,400.00 (Exhibit H). Subsequently, petitioner filed its quarterly VAT return for the first quarter of 1998 declaring a total input tax of P28,048,482.00 using the peso-dollar exchange rate at that time of P37.73 to US$1.00. In this regard, we resolve the first issue in the affirmative.

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Anent the second issue, petitioner presented Sales Invoice No. 008 to prove that the input VAT paid in the subject transaction was US$743,400.00 (Exhibit H). Under Revenue Memorandum Order No. 1-99, for purposes of input VAT recognition, purchases of goods or properties shall be evidenced by a VAT invoice duly issued by the supplier of goods or properties while purchase of service shall be evidenced by a VAT official receipt.

The third issue raises the question of whether or not petitioner generated any sales transaction subject to VAT for the period January 1 to December 31, 1998. Records will clearly disclose that it did not. The quarterly VAT returns filed by the petitioner (Exhibits, A, B, C and D) showed that there were no sales recorded subject to VAT for the period January 1 to December 31, 1998 the output VAT of which could have been credited against the unutilized input VAT for the first quarter of 1998.

In addition, petitioner carried over the unutilized input VAT for the first quarter of 1998 in the amount P28,048,482.00 as evidenced by its quarterly VAT returns (Exhibits B, C, D, F and G). Although there was an output VAT liability in the amount of P313,772.73 for the first quarter of 1999, petitioner did not apply the same against its unutilized input VAT (Exhibit F). Instead it opted to pay the said output VAT liability. The same was true with the output VAT liability of the petitioner for the second quarter of 1999 in the amount of P104,590.91 (Exhibit G), the reason being that petitioner intended to claim the entire P28,048,482.00 with the BIR. Further, it was not carried over anymore to the succeeding quarter (TSN, February 7, 2001, pp. 28-32).

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Having dispensed with the foregoing issues, we now delve on the crucial issue of whether or not petitioner is entitled to a tax refund in the amount of P28,048,482.00 representing input VAT paid on capital goods for the period January 1 to December 31, 1998.

We rule in the affirmative.

Petitioner anchored its claim on Section 112(B) [then Section 106(c)] of the Tax Code, as amended, in relation to Section 4.106-1(c) of Revenue Regulations No. 7-95, quoted hereunder for easy reference:

> "**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."
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> "**SEC. 4.106-1. Refunds or tax credits of input tax. –**
>
> (c) **Land** – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes on land purchased to the extent that such input tax has not been applied to output tax. The application should be made within two (2) years after the close of the taxable quarter when the purchase was made.
>
> Refund of input taxes on land shall be allowed only to the extent that such land is used in VAT taxable business."

Petitioner asserts that by express provision of law, purchased land actually used in the VAT taxable business is considered as purchase of capital goods, the unutilized input tax of which may be credited or refunded.

We agree.

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Clearly and simply from the above provision, a VAT registered taxpayer may apply for the issuance of tax credit certificate or refund of input taxes on land provided that an input tax has been paid on the purchase of such land and the same has not been applied to any output tax. The application must be made within two years after the close of the taxable quarter when the purchase was made. In addition, the land purchased must be used in VAT taxable business.

As earlier discussed, petitioner is a registered VAT taxpayer. Also, in its purchase of the land subject in this case, it paid an input VAT in the amount of P28,048,482.00 (Exhibit A). Moreover, petitioner was able to prove that it did not utilize the said input tax against any output VAT liability (Exhibits F & G) nor did it carry over the subject input VAT to the succeeding quarters of 1999 (TSN, February 7, 2001, pp. 28-32). Petitioner purchased the subject land on March 20, 1998 and it filed the first quarterly VAT return for 1998 on May 29, 1998. On March 30, 2000, petitioner filed the instant petition for review. Verily, the two-year requirement for application of refund or tax credit of input tax had been complied with by the petitioner.

All things considered and further taking into account that petitioner is mainly engaged in the business of leasing property and that the land purchased on March 20, 1998 is being used in VAT taxable business since the land is being leased to Koyo Manufacturing (Philippines) Corporation (Exhibit J), there would be no reason to deny the claim sought for by the petitioner.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **GRANTED.** Respondent Commissioner of Internal Revenue is hereby **ORDERED** to

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REFUND to the petitioner the amount of P28,048,482.00 representing unutilized input value-added tax for the first quarter of 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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

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