REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NO. 6106

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 14 2002

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DECISION

This is a judicial claim for refund in the total amount of P3,577,451.04 allegedly representing unapplied input value-added taxes paid on domestic purchases of goods and services covering the period January 1, 1998 to October 31, 1999.

Petitioner is a domestic corporation engaged in the business of rendering, among other things, technical and consultancy services in relation to mining, industrial, commercial and other projects. It is a registered value-added tax (VAT) taxpayer effective September 23, 1996 and was issued VAT Registration Certificate under OCN 9RC0000032985 (Exhibit GG).

On November 15, 1996, petitioner entered into a contract designated as "Implementation Agreement" (Exhibit JJ), with Placer Dome Technical Services Limited (PDTS-Vancouver), a non-resident foreign corporation incorporated under the laws of British Columbia, Canada, under which petitioner would render various technical services for PDTS-Vancouver.

The Implementation Agreement was the result of an incident that occurred on March 24, 1996, during which mine tailings from the San Antonio mine in Marinduque, owned and operated by Marcopper Mining Corporation (Marcopper), which had been discharged into a pit previously mined by Marcopper (Taipan Pit), inadvertently escaped from said Taipan Pit and spilled over into the Makulapnit and Boac Rivers. These resulted to potential damage to said rivers and the immediate environment. This incident required swift measures to be undertaken in order to contain the damage and prevent further spread of the tailing leaks, which may otherwise have cause extensive environmental damage.

In order to contain the damage and prevent further spread of the tailing leak, Placer Dome, Inc., being owner of 39.9% of Marcopper through a subsidiary, undertook to perform the clean-up and rehabilitation of the Makulapnit and Boac Rivers (the Project) through another subsidiary, PDTS-Vancouver.

PDTS-Vancouver, in turn, engaged the services of petitioner to undertake the implementation of the Project (Implementation Services) under the aforesaid Implementation Agreement.

Considering the potentially significant damage to the environment that may result from the tailing leak, it was decided between petitioner and PDTS-Vancouver that the grave exigencies of the situation required petitioner to immediately undertake the Implementation Services even prior to the formal signing of the Implementation Agreement. Thus, upon signing of the Implementation Agreement on November 15, 1996, the parties provided in the Agreement that all Implementation services rendered by petitioner prior to November 15, 1996 shall be deemed to have been provided pursuant to said Implementation Agreement.

Under the Implementation Agreement, PDTS-Vancouver would reimburse petitioner for all cost incurred by the latter in the performance of the Implementation Services under said Agreement, and related agreements, and pay on agreed service fee equivalent to one percent (1%) of such cost.

Thus, for the period January 1, 1998 to October 31, 1999, petitioner generated and recorded zero-rated sales of services under the Implementation Agreement amounting to US$5,272,781.46 (equivalent to P212,919,671.21, Philippine Currency). All amounts paid by PDTS-Vancouver to petitioner for the Implementation Services performed for the latter under the Implementation Agreement, were allegedly paid for in foreign currency (US dollars) and inwardly remitted to the Philippines in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP) pursuant to Section 108(B)(2) of the Tax Code, as amended (Exhibits OO & EE).

Likewise for the same period, petitioner paid VAT input taxes on domestic purchases of taxable goods and services amounting to P3,577,451.04 which is being claimed for refund in this petition for review (Exhibits BB, BB-1, N and NN-1 to NN-1,664). Petitioner filed with the Bureau of Internal Revenue its VAT returns for the period from January 1, 1998 to October 31, 1999 (Exhibits D, G, J, M, P, S, V, BB and DD). And it subsequently filed an amended VAT return for the first quarter of 1998 (Exhibit Y).

The above zero-rated export sales and domestic purchases of taxable goods and services for the same period are broken down, as follows:

Period Covered	Zero-Rated Sales of Services		Domestic Purchases/ Importation of Goods and Services	VAT Input Taxes
	(US$)	(PHP)		
1-1-98 to 3-31-98	149,029.45	6,561,319.60	12,829,203.46	1,282,920.35
4-1-98 to 6-30-98	317,032.88	13,958,006.62	2,567,157.82	256,715.78
7-1-98 to 8-31-98	638,664.91	28,118,499.99	7,886,238.60	788,623.86
9-1-98 to 12-31-98	1,337,670.21	52,154,423.81	1,545,178.20	154,517.82
1-1-99 to 3-31-99	424,729.84	16,145,255.25	1,876,008.70	187,600.87
4-1-99 to 6-30-99	655,875.66	24,878,978.81	3,348,065.90	334,806.59
7-1-99 to 9-30-99	1,057,445.57	43,272,787.54	3,094,727.10	309,472.71
10-1-99 to 10-31-99	692,332.94	27,830,399.59	2,627,930.60	262,793.06
TOTAL	**5,272,781.46**	**212,919,671.21**	**35,774,510.38**	**3,577,451.04**

Petitioner avers that the VAT input taxes it paid amounting to P3,577,451.04 on its domestic purchases of taxable goods and services, were all directly attributable to its zero-rated sales of services in the sum of US$5,272,781.46 or P212,919,671.21. Petitioner further maintains that it had not applied the said amount to any VAT output tax liability during the subject period nor to any succeeding quarter or quarters in accordance with Section 112 of the Tax Code.

Consequently, on April 17, 2000, petitioner filed with the respondent's Revenue District Office No. 50 (South-Makati), a claim for refund of excess or unapplied VAT input taxes paid on its domestic purchases of taxable goods and services in the amount of P3,577,451.04 covering the period January 1, 1998 to October 31, 1999 (Exhibit FF).

To toll the running of the two-year prescriptive period, the instant petition was filed on April 25, 2000 or barely a week after the administrative claim was filed. Hence, it would be unfair for the petitioner to assert inaction on the part of the respondent concerning its administrative claim.

Respondent, in his answer posted through registered mail on May 31, 2000, stated by way of Special and Affirmative Defenses, the following:

(a) The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

(b) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;

(c) One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute;

(d) 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;

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

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

Petitioner filed a reply thereto on June 16, 2000.

To buttress its case, petitioner presented documentary and testimonial evidence. Respondent, however, submitted the case based on the pleadings and evidence of petitioner (p. 182, CTA records) without filing a memorandum.

The parties submitted the following issues to be resolved by this Court, to wit:

(1) Whether or not petitioner has excess input taxes in the amount of P3,577,451.04 for the period covering January 1, 1998 to October 31, 1999;

(2) Whether or not petitioner's excess input taxes are attributable to its purchases that are directly related to the performance of its business or service;

(3) Whether or not petitioner's excess input taxes were not carried-over to the next succeeding quarter, i.e., the fourth quarter of 1999;

(4) Whether or not petitioner, based on the services it renders and the manner by which it is compensated for such services as described in the petition and as would be proven during the trial, qualifies as a zero-rated VAT entity pursuant to Section 108(B)92) of the NIRC; and

(5) Depending on the Court's resolution of issue (1), whether or not petitioner is consequently entitled to a refund of the VAT input taxes it paid for its domestic purchases of taxable goods and services for the period beginning January 1, 1998 to October 31, 1999, which purchases were directly attributable to the performance of petitioner's business/service.

Petitioner submitted its quarterly VAT returns (Exhibits D, G, J, M, P, S V), amended quarterly VAT return for the first quarter of 1998 (Exhibit Y) and monthly VAT return for October 1999 (Exhibit BB) to prove that it had excess input taxes in the amount of P3,577,451.04 for the period subject of this case. In addition, to prove that said excess input taxes were not carried over to the next succeeding quarter, petitioner presented as evidence, the quarterly VAT return for the fourth quarter of 1999 (Exhibit DD), amended quarterly VAT return for the fourth quarter of 1999 (Exhibit II), amended monthly VAT return for the month of November 1999 (Exhibit HH) and amended quarterly VAT return for the first quarter of 2000 (Exhibit LL). Reasonably, issues one and three are being resolved in favor of the petitioner.

To resolve issues number four and two, we quote the pertinent provisions of the law for easy discussion.

Section 108(B)(2) of the Tax Code, as amended, provides:

> "(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippine 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) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Petitioner insists that it was able to establish in the course of the trial, that its revenues were zero-rated by virtue of the inward remittances in US dollars through the Philippine banking system.

We disagree.

An examination of the documents on record will definitely show that petitioner did not declare any amount of export sales nor zero-rated sales of services for the period January 1, 1998 to October 31, 1999. Therefore, how can there be any zero-rated sales if petitioner had no export sales? Granting that there were inward remittances for the period, nevertheless, petitioner's receipt for the period January 1, 1998 to October 31, 1999 of the foreign currency allegedly for its indenting services as supported by Certification of Inward Remittances from Citibank, N.A. (Exhibit EE) and Summary of Billings and Inward Remittances which formed part of the independent CPA's report (Exhibit OO) are not sufficient evidence that petitioner had recorded its zero-rated sales. It is noteworthy that the certificate and summary did not indicate the nature of the inward remittance. Moreover, the alleged sales of services of herein petitioner were not supported by invoices or official receipts. It is worth mentioning that Section 113 of the Tax Code provides for invoicing requirements for VAT-registered persons, *viz*:

> "(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.

To implement the above law, Revenue Regulations No. 7-95 provides:

> **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 seller;
> 2. date of transaction;
> 3. quantity, unit cost and descritption 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.

Furthermore, it must be borne in mind that under Section 112(A) of the Tax Code, it is mandated that:

> "*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: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Clearly from the foregoing, to be entitled to a refund or tax credit of input VAT payments, several requirements must be first met, to wit:

1) input taxes were incurred and paid;
2) such input VAT payments were not applied against any output VAT liability;
3) there must be zero-rated or effectively zero-rated sales;
4) the input VAT payments were directly attributable to zero-rated sales or effectively zero-rated sales; and
5) the claim for refund or tax credit was filed within the two-year prescriptive period.

Indeed, petitioner complied with the first two requirements. However, contrary to petitioner's averments, there were no zero-rated sales reported for the period January 1, 1998 to October 31, 1999. Therefore, there were no zero-rated sales to which the input VAT payments could be directly attributed.

Accordingly, petitioner is not entitled to a refund of input taxes it paid for the period January 1, 1998 to October 31, 1999 in its domestic purchases of goods and services considering that there were no reported sales which they can be attributed to. Notably, whether or not the claim for refund was filed within the two-year reglementary period, is no longer material.

Tax refunds are in the nature of tax exemptions, and as such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the taxpayer (**Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., 309 SCRA 87**).

WHEREFORE, in view of all the foregoing, the Petition for Review is hereby **DENIED** for lack of merit.

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