REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR HAGEDORN SECURITIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 4657 and 4785

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated : JAN 30 1996

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DECISION

This refers to the consolidated claims for refund of Anscor Hagedorn Securities, Inc. in the amounts of P1,299,313.93 (for CTA Case No. 4657) and P752,419.49 (for CTA Case No. 4785) as erroneously paid value added taxes for the years 1989 and 1990, respectively.

As alleged in its petitions for review, the facts of the cases are as narrated hereinafter. Common to both cases are the allegations: (1) that petitioner is a licensed broker/dealer of securities rendering services to resident and non-resident investors; (2) that whenever petitioner "buys" shares of stocks in favor of its non-resident clients, the latter inwardly remit foreign currency as payment for the purchased securities, together with petitioner's commission; and when petitioner "sells" shares of stocks in favor of its non-resident clients, petitioner remits the proceeds in equivalent foreign currency, net of its commissions; and (3) that said services of petitioner being paid for in acceptable foreign currency "inwardly" remitted to the Philippines and accounted for in accordance with Central Bank rules and regulations, the same are subject to VAT at 0%.

In both cases, too, petitioner regularly filed its quarterly VAT returns for the years 1989 and 1990 and declared therein its quarterly gross sales of services. Allegedly, it erroneously included in said sales, its commission income which should be subject to zero per cent (0%) rate of VAT and not to ten per cent (10%) VAT which it had regularly paid.

For expediency, the Court prepared hereunder a summary in tabulated forms of the details of the VAT returns filed by petitioner for the years involved in the instant cases.

Details of VAT Returns filed
for 1989 (CTA Case No. 4657)

Quarter Covered	Gross Sales of Services Declared	10% VAT paid	Commission Income Included in Gross Sales	*Alleged Erroneously Paid VAT	Date of Filing VAT return
January to March, 1989	P 4,159,961.03	P 313,130.93	P1,987,358.00	P 180,668.96	April 20, 1989
April to June, 1989	7,747,055.78	665.079.40	1,928,067.86	175,278.90	July 19, 1989
July to September, 1989	13,376,390.55	1,177,366.77	5,428,094.65	493,463.13	Oct. 20, 1989
October to December, 1989	9,155,707.41	825,491.95	4,948,932.15	449,902.94	Jan. 19, 1990
Total Amount being claimed as refundable or tax creditable				P1,299,313.93	

Details of VAT Returns filed
for 1990 (CTA Case No. 4785)

Quarter Covered	Gross Sales of Services Declared	10% VAT paid	Commission Income Included in Gross Sales	*Alleged Erroneously Paid VAT	Date of Filing VAT return
January to March, 1990	P 6,586,316.02	P 591,465.14	P2,897,835.60	P263,439.60	April 20, 1990
April to June, 1990	4,058,886.75	332.109.06	2,050,663.79	186,423.97	July 20, 1990
July to September, 1990	3,263,052.31	284,000.34	2,489,405.95	226,309.62	Oct. 22, 1990
October to December, 1990	2,123,589.92	186,527.20	838,709.37	76,246.30	Jan. 21, 1991
Total Amount being claimed as refundable or tax creditable				P752,419.49	

Having realized it committed an error in subjecting its commission income to 10% VAT, petitioner filed written claims for refund with the B.I.R. For CTA Case No. 4657 it filed its administrative claim on September

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*Computed by multiplying commission income included in gross sales by $^{1}/_{11}$.

18, 1991. For CTA Case No. 4785, its administrative claim was filed on September 25, 1991. Not having been granted in the administrative level, petitioner appealed its two claims to this Court on October 18, 1991 and April 13, 1992, respectively.

Answer for CTA Case No. 4657 was filed by respondent on January 14, 1992. In it, respondent admitted the filing of VAT returns by petitioner, the payment of the net VAT thereon, subject however, to verification from BIR Accounting Division, the filing by petitioner of a claim for refund with respondent, and that the latter has not granted the former's claim for refund. The rest of the allegations were specifically denied for lack of knowledge sufficient to form a belief as to the truth thereof. By way of special and affirmative defenses, respondent further stated that:

> 1. Petitioner's claim is still pending investigation and consideration;
>
> 2. It failed to substantiate by proper documents the alleged zero rated transaction upon which it anchors its claim for refund;
>
> 3. It has also failed to show that the taxes paid were erroneously or illegally collected;
>
> 4. It has not likewise shown that the taxes being sought to be refunded were actually remitted to respondent and even assuming they were remitted, the presumption is that they

were received by respondent in accordance with law; and

5. It failed to show that it had strictly complied with the provisions of Section 204 of the Tax Code in relation to Section 230 thereof. A claim for refund is in the nature of an exemption which is construed strictly against the claimant (**Raisin, Inc. vs. Auditor General**, 25 SCRA 254).

For CTA No. 4785, answer was filed by respondent on September 18, 1992. In it, respondent admitted only the allegations in paragraphs 1 and 2 of the petition, which pertain to the legal capacity of petitioner to sue and that of respondent to be sued. He practically denied all the allegations for lack of knowledge and information sufficient to form a belief as to the truth thereof. The only allegation which he denied for being mere opinion and unfounded conclusion of fact and/or law, was that the commission income derived in buying and selling shares in the name of its non-resident clients, qualify as a zero-rated transaction pursuant to Section 102 (a) (2) of the Tax Code. As his special and affirmative defenses, respondent alleged the following:

1. Petitioner has failed to state any cause of action under Section 204 of the Tax Code, that, is it failed to show on the face of its petition that the collection of the amount of P752,419.49 is illegal and erroneous as against the legal presumption that the collection thereof is lawful and regular;

2. Provisions on tax refund are construed strictly against the taxpayer as they are in the nature of tax exemption;

3. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to do so is fatal to the action for refund; and

4. The claim for refund is still under investigation.

In one of the hearings conducted, specifically on June 8, 1993, counsel for petitioner verbally moved for the consolidation of the instant cases as they involve the same parties and issues. The consolidation was granted and this was confirmed by the Court in its resolution of July 5, 1993 (pp. 152 and 153, CTA records).

During the pendency of these cases, the claim for refund covered by CTA Case No. 4657 was favorably acted upon by respondent. The latter issued to petitioner two (2) Tax Credit Certificates (TCC) with the following details:

	SN No.	Date of Issuance	Amount
1.)	001976 (Exh. "2", Resp.; p. 220, CTA rec.)	Sept. 24, 1993	P613,187.08
2.)	001977 (Exh. "3", Resp.; p. 221, *Ibid*.)	Sept. 24, 1993	P330,179.00
	Total Amount Tax Credited		P943,366.08

The total amount of tax credit granted to petitioner was only P943,366.08 as the amount of P355,947.85 representing payments for the first and second quarters of 1989 was denied on the ground of prescription (Exh. "1-E," Resp.; p. 219, <u>supra</u>.).

The examiner who investigated petitioner's claim for refund, submitted a report on his findings, pertinent portion of which is quoted hereunder:

"xxx

> With the foregoing it appears that the commissions earned by subject taxpayer in the pursuit of its stock brokerage services to non-resident investor clients are subject to the VAT at zero percent and, therefore, there was indeed an erroneous payment of the VAT in so far as these commissions are concerned. <u>Be it noted though that the claim for tax credit with respect to the undue payments for the quarters ended March 31 and June 30, 1989 were filed beyond the two-year reglementary period mandated by Section 230 of the Tax Code, as amended</u>. Accordingly, the amount of P355,947.85, representing undue payments for the first and second quarters of 1989 must be denied on account of prescription, thereby leaving a creditable amount of only P943,366.08.
>
> It may be noted, too, that the erroneously paid VAT was charged to the Taxes and Licenses expense account and was deducted from income in taxpayer's 1989 income tax returns. Thus, a correction of taxpayer's 1989 income tax liability is in order.
>
> All told, taxpayer may recover the net amount of only P613,187.08, arrived at follows:

Amount claimed		P1,299,313.93
Deduct -	Claim filed beyond the two-year period	355,947.85

Creditable amount	943,366.08
Less : Income tax effect of the erroneous VAT payment	330,179.00
Net tax credit	P 613,187.08

In the light of the foregoing, it is respectfully recommended that the following be caused to be issued to Anscor-Hagedorn Securities, Inc. -

1. An Assessment Notice for P330,179,00, representing 1989 deficiency income tax, with a notation that the same will be paid by a tax credit certificate to be issued for the purpose;

2. A Tax Credit Certificate (TCC) for P330,179.00 to be used in payment for the 1989 income tax deficiency described in Item I above; and

3. Another TCC in the amount of P613,187.08, representing net credit for erroneous VAT payments in 1989,

all pursuant to Section 102 (a) (2) in relation to Section 230 of the National Internal Revenue Code, as amended." (Underscoring supplied; pp. 218, 219, CTA records)

From the above, respondent's examiner reckoned the two-year prescriptive period from the dates of payment, as mandated by Section 230 of the Tax Code. On this point, the Court begs to disagree. Section 230 should not apply to the instant case. It should be Section 106 (b) of the Tax Code, which is the proper applicable law as the case involves claim for refund of VAT based on zero-rated or effectively zero-rated sale. The law provides:

> "Section 106. *Refunds or tax credits of input tax.* -
>
> (a) Export Sales. - x x x.
>
> (b) Zero-rated or effectively zero-rated sales. - Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
>
> x x x" (Underscoring supplied).

Applying the foregoing to the case at bar, the two-year prescriptive period for payments made during the first quarter of January to March, 1989, would start from April 1, 1989 and end on March 30, 1991. The claim was filed with the B.I.R. on September 18, 1991 while the petition for review was filed with this Court on October 18, 1991. Both claims were filed obviously beyond the two-year prescriptive period, hence, prescribed.

For payments covered during the second quarter of April to June, 1989, the two-year prescriptive period, began on July 1, 1989 and ended on June 30, 1991. Given the same dates of filing the claims as September 18, 1991 and October 18, 1991, definitely, said claims for the second quarter were filed after the expiry date of the prescriptive period, and therefore, have also prescribed.

The two-year prescriptive period for the third quarter payments was from <u>October 1, 1989</u> to <u>September 31, 1991</u>. For this group of payments, the administrative claim was timely filed with the B.I.R. on September 18, 1991. However, the claim was filed judicially on October 18, 1991 which was beyond September 31, 1991, the deadline of the prescriptive period. Therefore, similar to the first two quarters of payments, the succeeding payments for the third quarter also prescribed.

Only the payments for the fourth quarter did not prescribe. For the dates of filing the claims, were well within the two-year period from January 1, 1990 to December 31, 1992.

On account of the Court's findings, the claim pertaining to the third quarter should have been denied due to prescription. However, for the reason that tax credit certificates have already been issued by the respondent, long before this case has been submitted for decision, the Court will not anymore disturb such findings of the respondent. Respondent may voluntarily and legally pay the third quarter claim inasmuch as the administrative claim for refund was filed on time.

In view of the fact, that petitioner's claim for tax credit in CTA Case No. 4657, has been acted upon by the respondent, consideration of the merits of the said case has already been rendered moot and academic. Therefore, only the merits of the second case, CTA Case No. 4785 will be passed upon by this Court.

The issues to be resolved are:

1. Whether or not petitioner's commission income qualify for the zero rate of VAT; and

2. Whether or not the requirements for claims for refund have been complied with by petitioner.

The applicable law relative to the first issue is Section 102 (a) (2) of the Tax Code which provides:

> "Section 102. Value - added tax on sale of services. - (a) Rate and base tax - There shall be levied, assessed and collected, a value-added tax equivalent to 10 percent of gross receipts derived by any person engaged in the sale of services. x x x Provided that the following sales by VAT-registered persons shall be subject to 0%:
>
> (1) x x x
>
> (2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.
>
> (3) x x x "

To qualify for zero percent (0%) rate of VAT under sub-paragraph 2 of Section 102 (a), three (3) requirements must be met namely:

1. The consideration for the service is paid for in acceptable foreign currency;

2. The foreign currency is remitted inwardly to the Philippines; and

3. The remittance must be accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

Similar to what happened in CTA Case No. 4657, an investigation was also conducted on petitioner's claim. The investigating examiner, likewise, submitted a written report on her findings wherein she enumerated the different documents or papers submitted to her. Thus:

"xxx In support of its claim, taxpayer submitted copies of the following - among others

1.) VAT returns and proof of payment of the tax for 1990.

2.) Central Bank licenses and STD (Securities Transaction Division) approval of foreign investments;

3.) Bank credit advices for inward remittances of proceeds of foreign investments;

4.) Application to purchase dollars/foreign currency with approval by the Foreign Operation and Investment Department of the Central Bank; and

5.) Bank debit memos on purchases of foreign exchange for remittances to non-resident investors. xxx" (Exh. "A", Resp.; p. 41, CTA rec.)

The above report was confirmed by the investigating examiner herself, Ms. Marissa dela Torre, when she testified in Court on March 15, 1994 as petitioner's witness (pp. 7-9, T.S.N. Hearing of 3-15-94). Thus:

Q. Ma'am, I'll be more specific now. Do you, or have you examined the claim for refund of petitioner corporation Anscor Hagedorn Securities, Inc. for value-added tax in 1990?

A. Yes.

Q. Now, in the examination of petitioner's claim for refund, has it complied with the documentary requirements of the Bureau?

A. Yes.

Q. And in their compliance with the documentary requirements, they have submitted the necessary documents?

A. As far as my report is concerned, they have submitted all the requirements. Only one is still unsubmitted which is the documentary stamp tax on increase on capital stock for the year 1990.

Q. For 1990 claim for refund, would it be accurate to state that they have submitted their value-added tax return?

A. Yes.

Q. For the four quarter of 1990?

A. Yes.

Q. Would it be also accurate to state that they also have submitted their application for tax credit for the period 1990?

A. Yes.

Q. Would it be also accurate to state that they have also submitted the confirmation receipt and proof of payments of value-added tax for 1990?

A. Yes, it was all attached on the return.

Q. Have they also submitted to you, Madam, the Central Bank Licenses and Securities Transaction Division approval of foreign investment?

A. Yes.

To support is claim, petitioner submitted and formally offered the following exhibits as its evidence, to wit:

Exhibits	Nature	Purpose
"A"; "A-1" and "A-2"	Memorandum Report dated 3 November 1993	To prove that the BIR has approved petitioner's claim for VAT refund for 1990 in the sum of P679,080.80
"A-3"	Signatures of BIR VAT Examiner M. dela Torre and Supervisor G.B. Javier	To prove that after examination of petitioner's claim and submission of all documents, the assigned BIR officers recommends the approval of petitioner's claim for refund in the sum of P679,080.80

Exhibits	Nature	Purpose
"B" to "B-2"	BIR Revenue Officer's VAT Audit Report	– same as Exhibits "A" to "A-3"
"C" to "C-2"	BIR Authority to issue VAT credit/refund	– same as Exhibits "A" and "B" and submarkings
"C"	VAT returns 1st quarter, 1990 (CTA Record, p. 6)	To prove that petitioner filed its VAT return for 1st quarter of 1990
"D"	Confirmation Receipt No. B19310177 (CTA Record, p. 7)	To prove that petitioner paid the VAT input tax for 1st quarter 1990
"E"	VAT Return 2nd quarter 1990 (CTA Record, p. 8)	To prove that petitioner filed its VAT return for 2nd quarter 1990
"F"	Confirmation Receipt No. 20319341 (CTA Record, p. 9)	To prove that petitioner paid the VAT input tax for 2nd quarter 1990
"G"	VAT Return 3rd quarter 1990 (CTA Record, p. 10)	To prove that petitioner filed its VAT return for 3rd quarter 1990
"H"	Confirmation Receipt No. 208739 (CTA Record, p. 11)	To prove that petitioner paid that VAT input tax for 3rd quarter 1990
"I"	VAT Return 4th quarter 1990 (CTA Record, p. 12)	To prove that petitioner filed its VAT return for 4th quarter 1990
"J"	Confirmation Receipt No. B21391835 (CTA Record, p. 13)	To prove that petitioner paid the VAT input tax for 4th quarter 1990
"K"	Claim for Refund dated 25 September 1991 (3 pages) (CTA records, pp. 15-16)	To prove that claim for refund on petitioner VAT for 1990 was filed with the BIR on September 26, 1990

Exhibits	Nature	Purpose
"K-1"	Attachment of K (zero rate - sales) (CTA Record, p. 14)	To show petitioner's zero-rate sales for 1990

(p. 39-40, CTA records)

With all the foregoing documentary and testimonial evidence, petitioner has substantially proven that its commission income qualified for the zero rate of VAT. The three (3) requirements, provided for under sub-paragraph 2 of Section 102(a) of the Tax Code, have been met satisfactorily by petitioner.

The second issue deals on prescription, applying Section 106(b) of the Tax Code, the reckoning of the two-year prescriptive period starts after the close of the quarter when such sales were made.

For the first quarter of 1990 payments, the two-year period began on April 1, 1990 and ended on March 30, 1992. The claim was filed with the B.I.R. on September 25, 1991, while the petition was filed with this Court on April 13, 1992. The filing with the B.I.R. was well within the two year period, but the filing of the judicial claim was clearly beyond March 30, 1992. Hence, the amount of P263,439.60 must be denied on account of prescription.

The two-year prescriptive period for the second quarter payments, was from July 1, 1990 to June 30, 1992. Obviously, both the filing of the administrative claim and the judicial claim were not outside the two-year prescriptive period.

Payments made during the third quarter did not also prescribe. The start of the two-year prescriptive period was on October 1, 1990 and the end was on September 31, 1992. September 25, 1991, date of filing with the B.I.R., and April 13, 1992, date of filing with this Court, were definitely within the two-year period.

For payments dated during the fourth quarter, their two-year prescriptive period was from January 1, 1991 to December 31, 1993. September 15, 1991 and April 13, 1992 were also within the said two-year period, hence, said payments similarly did not prescribe.

For the reason that payments for the first quarter of 1990 have already prescribed, the amount of P2,897,835.60 representing commission earned from non-residents for the first quarter of 1990, will be excluded in the computation of the amount to be refunded to petitioner. Thus, following the computation (p. 42, CTA records) done by respondent's examiner, as incorporated in her memorandum report dated November 3, 1993 (Exhibit

"A", Petitioner), only the amount of P415,641.21 may be granted to petitioner. The recomputation of such amount is done as follows:

Commission income from sale of services		P16,031,845.00
Less: zero-rated commission income		
2nd quarter	P2,050,663.79	
3rd quarter	2,489,405.95	
4th quarter	839,709.37	5,378,779.11
Commission income subject to 10% VAT		P10,653,065.89
Multiply by (VAT is not billed separately in the invoice)		$^{1}/_{11}$
VAT due		P 968,460.54
Less: VAT Payments		
1st quarter	P 591,465.14	
2nd quarter	322,109.06	
3rd quarter	284,000.34	
4th quarter	186,527.20	1,384,101.74
Total amount of refundable output tax		P 415,641.21

WHEREFORE, in view of all the foregoing, the petition covered by CTA Case No. 4657 is hereby **DISMISSED.** The claim has already been favorably acted upon by respondent, by issuing to petitioner tax credit certificates in the total amount of P943,366.08. The amount of P355,947.85 was disallowed on account of prescription.

The claim covered by CTA Case No. 4785 is hereby **GRANTED** but only in the reduced amount of P415,641.21, as payments for the first quarter of 1990 have prescribed. Respondent is hereby ordered to issue tax credit in said amount, in favor of petitioner, representing erroneously paid VAT on the latter's commission income earned during taxable year 1990.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals