REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BABCOCK-HITACHI (PHILS.) INC.,
Petitioner,

versus

C.T.A. CASE NO. 4623

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 10 1995

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# DECISION

Petitioner is a registered domestic corporation with principal office address at 2305 Pasong Tamo extension, Makati, Metro Manila. It seeks from respondent the issuance of a tax credit certificate in the amount of P3,523,845.17 allegedly representing refund of VAT input taxes paid for the period from April 1, 1989 to December 31, 1989.

It is VAT-registered with VAT Registration No.32A-8-006603.

It is likewise registered with the Board of Investment as a pioneer enterprise engaged in business as an export producer of water tube boilers for industrial usage and utility power plants.

It alleges that for the period from April 1 to December 31, 1989, it has accumulated input tax which arose from its domestic purchase of taxable goods and services and importation of capital equipment used in its trade and business.

For the said period, it allegedly filed with the BIR quarterly VAT returns which showed zero-rated sales and a creditable input tax in the total amount of P3,523,845.17.

Then it filed with the BIR an application for tax credit which up to the date of filing the instant petition for review remains unacted upon, hence, this appeal.

In her answer, respondent admits the filing by petitioner of an application for tax credit. However, she asserts that:

> "4. The present petition is premature because:
>
> "a) the claim for refund of petitioner is still pending investigation and consideration before the office of respondent;
>
> b) no decision has yet been rendered on petitioner's claim for refund;
>
> 5. Petitioner failed to substantiate by proper documents its alleged zero rated sales to serve as basis for its claim for refund of excess input tax;

6. Petitioner likewise failed to show it had strictly complied with the requirements of Section 204 of the Tax Code in relation to Section 230 thereof. The burden is imposed on petitioner to show compliance with these requirements since a claim for refund and/or tax credit partakes of the nature of tax exemption which is construed strictly against the claimant (Rainsins, Inc. vs. Auditor General, 25 SCRA 754)."

From respondent's answer, spring three (3) questions that need adjudication by this Court, namely:

1. Whether or not petition is prematurely filed;

2. Whether or not petitioner failed to substantiate by proper documents its alleged zero rated sales; and

3. Whether or not petitioner had complied with the requirements of Section 204 of the Tax Code in relation to Section 230 thereof.

This Court disagrees with respondent's averment that the petition at bar is premature. Although the claim may still be pending investigation and/or consideration by respondent's office, there is no legal basis or justification in keeping petitioner endlessly waiting for a decision. Too fundamental is the rule that filing of refund or tax credit claim both in the administrative and judicial levels must be done within two (2) years from the date of payment. Because of the time element requirement, absence of a decision must not deter petitioner from appealing to this Court at the soonest possible time.

In the case at bar, the two (2) year period is to be reckoned from any of the periods provided under paragraphs (a), (b) or (c) of Section 106 of the Tax Code, whichever is applicable. The strict observance of this two-year period has long been settled in a line of Supreme Court decisions, one of them is hereunder partially quoted:

> "The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. If, however, the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period <u>without awaiting the decision of said collector.</u>" (Underscoring supplied; Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., 22 SCRA 12)

As regards the second issue, this Court brushes aside respondent's contention that petitioner failed to substantiate by proper documents its alleged zero rated sales. The transcript of stenographic notes (T.S.N.) taken during the hearing of September 13, 1993 bears the fact that petitioner presented in Court documentary and testimonial evidence to prove its zero rated export sales. Pertinent portion of said t.s.n. is hereby reproduced:

"ATTY. VILLANUEVA

Q. Specifically, Ms. Witness, for the period April to December 1989, how much did your company earn from your export sales?

A. U.S. $135,043.00.

Q. I am showing you this document previously marked and compared as Exhibit "NG" for the petitioner, will you please identify what this document is?

A. This is the schedule of our export sales, also schedule of inward remittance as per export earnings.

Q. Likewise, can you please tell for the record what is the amount appearing below which has been previously marked as Exhibit "NG-1" for the petitioner?

A. U.S. $135,043.00.

Q. And what is this U.S. $135,043.00 represents, Ms. Witness?

A. This is the amount of our export sales as of December 31, 1989.

Q. Is this an original or a photocopy, Ms. Witness?

A. Photocopy only.

Q. And where is the original?

A. We submitted it to the B.I.R. when we filed our VAT refund.

ATTY. VILLANUEVA

Your Honors, may we manifest likewise that this schedule of inward remittance for export and earnings previously marked as Exhibit "NG" forms part of the BIR records, Your Honors.

Q. And on the bottom of this document appears a signature. Will you please identify this signature

A. <u>Signature of our former treasurer Yojiro Yuri.</u>

ATTY. VILLANUEVA

Your Honors, may we request that the signature of Yojiro Yuri be marked as <u>Exhibit "NG-2"</u> for the petitioner," (Underscoring supplied; <u>T.S.N.</u> September 13, 1993 hearing, pp. 17-19)

From the foregoing, it is clearly stated that petitioner's proof of its zero-rated sales is the schedule of its export sales which was marked as its Exhibit "NG". Although what was submitted in Court was merely a photocopy, petitioner's witness explained in open Court that the original copy of said document was submitted to the BIR when it filed its claim. This prompted petitioner's counsel to manifest that aforesaid document forms part of the BIR records. Sad to state however, is the fact that the BIR records had not been transmitted to this Court up to the time this case was submitted for decision. Be that as it may, Exhibit "NG" of petitioner is admissible, it being properly identified by petitioner's witness and there being no objection interposed by respondent's counsel insofar as its existence is concerned, as stated in his <u>Comment on Petitioner's Offer of Evidence,</u> (p. 429, CTA records).

To corroborate Exhibit "NG", petitioner likewise presented in Court Exhibits "NH" to "NH-2" which are certifications issued by Rizal Commercial Banking Corporation (RCBC) as to the amount of its foreign exchange remittance receipts issued in favor of petitioner. Pertinent portions of the T.S.N. taken during the September 13, 1993 hearing are again quoted herein below:

> "Q. Ms. Witness, you mentioned that your company export 100% of its products abroad. Will you please tell us whether the proceeds of these exports have been inwardly remitted to the Philippines?
>
> A. Yes.
>
> Q. <u>And what have you to show these inward remittances?</u>
>
> A. <u>Bank certifications from RCBC.</u>
>
> Q. Do you have anything to show, Ms. Witness?
>
> A. This is the bank certification issued by RCBC.
>
> Q. Is this the original or photocopy?
>
> A. Photocopy only.
>
> Q. <u>Where is the original, Ms. Witness?</u>
>
> A. <u>We submitted it to the BIR when we filed our VAT refund claims."</u>
> (Underscoring supplied; <u>Ibid</u>., pp.13-14)

Winding up on the second issue, this Court rules that the submission of schedule of export sales backed up by RCBC certifications is sufficient enough to prove that petitioner has indeed realized zero-rated sales. Although Exhibit "NG" apparently may be said to be self-serving, as it has been prepared and signed by a certain Yojiro Yuri, former treasurer of petitioner, the certifications of RCBC are accorded credence by this Court. It is of common knowledge that bank transactions are usually treated with strict confidentiality, and as such, once they are divulged in Court, they are, more often than not, considered reliable or believed to be true.

The third issue to be ventilated concerns petitioner's alleged failure to comply with the requirements of Section 204 in relation to Section 230 of the Tax Code. Section 204 require taxpayers to file written claims for credit or refund with the B.I.R. within two years from the payment of the tax. Section 230 mandates the filing of a suit for refund/tax credit with this Court also within the two-year period from the date of payment of tax.

Respondent's averment that petitioner made no compliance with the aforesaid provisions is a blatant error. The records of the case bear witness to the fact that petitioner almost fully complied with the subject provisions of the Tax Code. The period covered by petitioner's claim is from April 1, 1989 to December 31, 1989. Various invoices of input taxes paid bear dates which are within the said period. Petitioner filed a written claim with the VAT Division of the B.I.R. on August 14, 1990 (p.16, CTA records). Then on June 27, 1991 it filed its petition for review with this Court. Apparently, it was only in the filing of its claim in the judicial level that petitioner committed a three-month delay. This is not however, fatal to the entire claim. If at all, only claims covering the period from April 1, 1989 to June 27, 1989 have prescribed. The Court has still jurisdiction over claims beyond June 27, 1989 or from the latter date up to December 31, 1989.

The Court takes full cognizance of the mandatory requirements provided under Section 204 and 230 when it comes to refund or tax credit of all kinds of taxes. However, if the refund or tax credit involves VAT input taxes, the Court strongly upholds the additional applicability of Section 106 of the Tax Code. This provides:

> "Section 106. *Refunds or tax credits of input tax.*
>
> (a) *Export Sales.*-An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance

of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.

(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.

(c) *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 for refund may be made only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made: Provided, that a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later; Provided, however, that the application is filed not later than 2 years from the dates herein prescribed.

xxx." (Underscoring supplied)

A careful perusal of Sections 204, 230 and 106 of the Tax Code reveals that if the refund or tax credit claim involves any kind of internal revenue tax except

VAT input tax, there are three important dates to consider, to wit:

1. date of payment of tax being claimed as refundable or creditable;

2. date of filing a written claim for tax refund/credit with the B.I.R.; and

3. date of filing a petition for review with this Court.

Dates of accomplishing numbers 2 and 3 should be within two years from date number 1, date of payment of tax (Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. 22 SCRA 12). It must be noted that this is a general rule for it has several exceptions as ruled by the Supreme Court.

However, if the refund or tax credit claim covers VAT input taxes, the aforementioned three (3) dates are still considered in addition to other dates provided under Section 106. Thus, if the claim is based on capital goods imported or locally purchased [par. (c), Ibid. ], the filing of claim must be made within two (2) years from the date of payment of the input taxes, and the date after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made. The exception to this is when the VAT-registered person has just commenced business, he may apply for refund not earlier than 180 days from the date of registration or actual start of business operation, whichever comes later.

Aside from the dates just elucidated, special concern must also be accorded to the other requirement provided under paragraphs (a) and (b) of Section 6 that the input taxes being claimed as refundable/tax creditable should be attributable to the goods exported or to the zero-rated or effectively zero-rated sales.

It is in the light of the foregoing discussions, that this Court will finally adjudicate if petitioner is entitled to the entire amount of P3,523,145.17.

After a thorough examination of the numerous invoices presented and submitted in Court as evidence for petitioner, we find that only the total amount of P294,683.00 representing input taxes on capital goods imported from September 1989 to October 1989 can be refunded. In its application for VAT credit/refund (Exhibit "D", p.139, CTA records), petitioner clearly specified the period covered as September 1989 to October 1989. Breakdown or details of said refundable amount are shown hereunder:

| Date | O.R. No. | Particulars | Exh. | Input Taxes Paid |
|---|---|---|---|---|
| 09-15-89 | 2761979 | Steel plate and seamless steel tube | N-2 | P 9,129.00 |
| 09-15-89 | 2761980 | Electrical cables and tool cabinet | N-2 | 187,393.00 |

| | | | | |
|---|---|---|---|---|
| 09-15-89 | 2761986 | Electrical materials | O-2 | 2,720.00 |
| 10-30-89 | 2892924 | Electrical materials | P-2 | 88,424.00 |
| 10-30-89 | 2892925 | Materials for equipment testing | O-2 | 7,017.00 |
| | | T O T A L | | P294,683.00 |

The purchases of capital goods which were not claimed administratively cannot be refunded. These are exhibits:

R-2, Z, AF, AG, AR, AS, BC, BD, BE, BF, BK, BL, CX, CY, DA, DB, DC, DD, DE, DM, DQ, DS, DT, DW, DZ, EA, EB, EC, ED, EF, EI, FA, FT, FU, GC, GI, GR, GW, IE, IH, II, IN, IZ, JG, JL, JN, NQ, JR, KD, KX, LW, and MP.

Petitioner's claim based on export sales [Sec. 106 (a)], cannot likewise be granted. The exhibits or invoices presented do not pertain to purchases of goods and services that are attributable to the goods exported. These exhibits are <u>expenses</u> for either of the following:

<u>REPAIRS AND MAINTENANCE ACCOUNT:</u>

X, AN, AW, AX, AY, AZ, BA, BB, BN, BO, BQ, BU, BY, CD, CG, CM, CP, CW, DN, DX, DY, EL, ES, ET, FP, FQ, GE, HK, HL, HT, HU, HY, IK, JC, JD, JE, JW, JX, JY, KN, KP, KO, KQ, KS, LN, LZ, MF

<u>SUPPLIES:</u>

W, BM, BP, BR, BT, BX, CA, CB, CF, CK, CL, CN, CO, CQ, CS, CT, CU, CV, DF, DG, DH, DI, DJ, DK, DL, DO, DP, DR, DU, DV, EE, EG, EH, EJ, EK, EM, EN, EO, EP, EQ, ER, EU, EV, EW, EX, EY, EZ, FB, FC, FD, DE, FF, FG, FH, FI, FJ, FK, FL, FN, FM, FO, FR, FS, FV, FW, FX, FY, FZ, GA, GB, GD, GF, GG, GN, GJ, GK, GL, GM, GN, GO, GP, GQ, GS, GT, GU, GV, GX, GY, GZ, HB, HC, HD, HE, HF, HG,

HH, HI, HJ, HM, HN, HP, HQ, HR, HS, HV, HW, HX,
HZ, IA, IB, IC, ID, IF, IG, IH, IJ, IK, IM, IL,
IO, IP, IQ, IS, IT IU, IV, IW, IX, IY, JA, JB,
JF, JH, JI, JJ, JK, JM, JP, JS, JT, JU, JV, JZ,
KA, KB, KC, KE, KF, KG, KH, KJ, KI, KK, KL, KM,
KR, KU, KT, KV, KW, KY, KZ, LA, LB, LC, LD, LE,
LF, LG, LH, LI, LM, LO, LP, LQ, LR, LS, LT, LU,
LV, LX, LY, MA, MB, MC, MD, ME, MG, MH, MI, MJ,
MK, ML, MM, MO, MN, MQ, MS, MT, MU, MR, MV, MW,
MX, MY, MZ, NA, NB, NC, ND, NE, NF

The above invoices covered expenses incurred for: typesetting and stripping charges; photo processing services; xerox services; purchase of petty cash vouchers, check vouchers, acknowledgment receipts, letter head stationaries, envelopes, calling cards, folders and lots of various kinds of office supplies.

CAR RENTAL:

T, U, V, AC, AD, AH, AI, AJ, IK, IL, IM,
AP, AT, AU, AV

SECURITY SERVICES:

BS, BY, CD, CG, CM, CP

DELIVERY SERVICES:

Y, AE

The first invoice or Exh. "Y" refers to trucking service fee paid for the delivery of drafting stools and tables to Babcock Office in Bauan, Batangas.

The second invoice or Exh. "AE" covers trucking service fee paid for the delivery of Babcock-Hitachi drafting machine, locker cabinet and drawing paper cabinet.

VISA FEES:

AQ, BG, BH, BI, BJ

These invoices pertain to service fees and visa fees paid for the extensions of ACR's of Yuri/Yojiro; Imai/Munesaburo; and Tamura/Hajime.

MANPOWER/JANITORIAL SERVICES:

CH, CI, CJ

X-RAY:

AO

Exhibits "HO" and "JO" are not also refundable as they are not VAT invoices.

**WHEREFORE**, in view of the foregoing, the claim for tax credit is hereby granted but only in the amount of P294,683.00. Respondent is hereby ordered to issue tax credit certificate in said amount in favor of petitioner.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

DECISION
C.T.A. CASE NO. 4623



WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

## CERTIFICATION

I hereby certify that the 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