REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DOW ELANCO B.V.
PHILIPPINE BRANCH,
Petitioner,

\- versus -

C.T.A. CASE NO. 5255

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 14 1998

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DECISION

Before Us is a petition for review seeking for a refund or issuance of a tax credit certificate in the amount of P86,002.58 allegedly representing excess input value-added tax paid by the petitioner for taxable year 1993.

The facts of the case are simple.

Petitioner is a foreign corporation duly organized under the laws of the Netherlands and doing business in the Philippines by virtue of a Certificate of Authority (Annex A, Petition) issued by the Securities and Exchange Commission on August 13, 1990. It is also a VAT registered enterprise with Certificate of Registration No. 94-470-000600-3 (Exhibit "C") it being engaged in indent sales of pesticide and other related products from foreign suppliers for which it earns commission income subject to VAT.

The commissions earned by the petitioner are allegedly received by the petitioner from its foreign principals in foreign currency inwardly remitted to the

Philippines and accounted for by the Central Bank through its authorized agent bank, thus, petitioner claims to be a zero-rated VAT enterprise.

Petitioner filed its Quarterly VAT Returns in 1993 reflecting the following input tax payments:

	1st Quarter (Exh. "H")	2nd Quarter (Exh. "K")	3rd Quarter (Exh. "N")	4th Quarter (Exh. "Q")
Date Filed	April 20, 1993	July 20, 1993	Oct. 18, 1993	Jan. 20, 1994
Carried Over from Previous Quarter	P530,926.47	P543,734.27	P358,734.40	P362,890.89
Domestic Purchase of taxable goods	19,089.98	45,149.83	13,247.40	24,367.27
Net Creditable Input Tax	P550,016.45	P588,884.10	P371,981.80	P387,258.16
Less Amount Applied This Quarter	6,282.18	533.36	9,090.91	(54.55)
		P588,350.74		P387,312.71
Less: Any Refund/TCC Claimed		229,616.34		70,525.03
Balance Carried to Succeeding Quarter	P543,734.27	P358,734.40	P362,890.89	P316,787.68

Upon recalculation of its VAT payments for 1993, petitioner discovered that it is entitled to only P86,002.58 (Exh. "E") as excess input VAT payments computed as follows:

First Quarter	P 19,089.98
Second Quarter	45,149.83
Third Quarter	13,247.40
Fourth Quarter	24,367.27
P101,854 .48	
Less: Output Tax	15,851.90
Amount of Claim	P 86,002.58

On March 28, 1995, petitioner filed with the respondent an application for tax credit/refund in the amount of P86,002.58 (Exh. "S") pursuant to Section 106(b) of the Tax Code.

The inaction of the respondent on the aforementioned application for tax credit/refund considering that the two-year prescriptive period under Section 230

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of the Tax Code was about to expire impelled petitioner to file the instant petition before Us on May 22, 1995.

Respondent in her Memorandum posited, "that input VAT taxes shall be allowed as tax credit only if supported by invoices or receipts, showing among others, the VAT registration number of the seller and the name of the purchaser, customer or client. Furthermore, the printing of said receipts or invoices must be authorized by the Bureau of Internal Revenue" pursuant to the provisions of Revenue Regulations No. 5-87 and Sections 108(a), 238 and 239 of the Tax Code. She asserted that in the case at bar, all input taxes claimed by the petitioner which failed to comply with the said requirements should be disallowed as tax credit/refund.

During the course of the trial, petitioner formally offered the following documentary evidences which were properly identified by its witness:

1. VAT Registration Certificates of petitioner (Exhs. "A", "B" and "C");

2. VAT Working Papers Summary for 1993 (Exh. "D");

3. Summary of Excess Input Tax claims of the petitioner for 1993 (Exh. "E");

4. Monthly Summary of Excess Input Tax claims of the petitioner for 1993 together with supporting invoices and/or official receipts of its purchases (Exhs. "E-1" to ""E-8-z-10");

5. 1993 Working Paper on Value Added Tax Rates/Ratio to show the ratio between exempt sales and zero-rated sale as for allocation of input tax. (Exh. "F");

6. Monthly VAT Returns filed by the petitioner for 1993 (Exhs. "G", "I", "J", "L", "M", "O", and "P");

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7. Quarterly VAT Returns filed by the petitioner for 1993 (Exhs. "H", "K", "N", and "Q");

8. Application for VAT Credit filed by the petitioner with the Department of Finance (Exh. "R");

9. Request for VAT Tax Credit/Refund filed by the petitioner with the BIR (Exh. "S");

10. 1993 VAT Purchase Journal and Sales Journal of the petitioner (Exhs. "T" to "T-11", "U" to "U-11");

11. DowElanco Pacific Limited Credit Memos issued in favor of the petitioner (Exh. "V" to "V-1"); and

12. Report of Foreign Exchange Cash Receipts and Disbursements for the months of January to May 1993 prepared by the petitioner (Exhs. "W" to "W-4")

The sole issue to be resolved in this case is whether or not petitioner is entitled to the tax credit/refund sought amounting to P86,002.58, representing excess input VAT paid by the petitioner for the year 1993.

We hold against the petitioner.

The undisputed fact that petitioner is engaged in indent sales of pesticide and other related products from foreign suppliers for which it earns commission income in foreign currency inwardly remitted to the Philippines and accounted for by the Central Bank through its authorized agent bank lead this Court to conclude that petitioner is a zero-rated VAT taxpayer falling squarely within the provisions of Section 102(b)(2) of the Tax Code, to quote:

> "**Sec. 102 (b)** ***Transactions subject to zero-rate***. - The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) x x x

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(2) Services other than those mentioned in the preceding sub-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)."

And as a zero-rated taxpayer, it may validly apply for tax credit/refund of input tax to the extent that such input tax has not been applied against output tax under Section 106 of the Tax Code, to wit:

"Sec. 106. Refunds or tax credits of input tax. - (a) 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 sale 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas: x x x"

On factual issues however, we find that petitioner failed to fully substantiate its entitlement to the tax refund/credit sought due to insufficiency of evidence

Section 2(c)(2)(ii) of Revenue Regulations No. 3-88 specifically enumerates the requirements for the issuance of tax credit certificate or tax refund of input taxes previously paid by a zero-rated taxpayer engaged in sale of goods or services, to quote:

"(c) Claims for tax credits/refunds. - Application For Tax Credit/Refund of Value Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice /receipt, however,

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> shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:
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> x x x
>
> 2. Zero-rated sale of services.
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> i) x x x
>
> ii) statement from the Central Bank or any of its accredited agent bank that the consideration in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.
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> Under subparagraphs 1(ii) and 2(ii), the statement shall show the amount in foreign currency of the export proceeds or consideration and the date of inward remittance, conversion rate into Philippine currency and the total peso value thereof."

In the case at bar, petitioner substantially failed to comply with the aforementioned requirements when it opted not to submit statements from the Central Bank or any of its authorized agent banks that the consideration in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations. Petitioner inadvertently presumed that its self-serving documentary evidences composed of DowElanco Pacific Ltd. Credit Memos and Reports of Foreign Exchange Cash Receipts and Disbursements would suffice to prove that it actually received its sales commissions from its foreign principal in acceptable foreign currency inwardly remitted to the Philippines.

Such presumption is fatal to its claim, for the law is clear and unequivocal, that zero-rated taxpayers seeking for an issuance of a tax credit certificate or tax

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refund of its input VAT payments are required to submit together with its application for tax credit/refund, a statement from Central Bank or any of its authorized agent banks, that it actually received consideration in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with applicable banking regulations.

WHEREFORE, in view of all the foregoing, petitioner's claim for issuance of tax credit certificate or refund is hereby **DENIED** due to insufficiency of evidence. No pronouncements as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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
Court of Tax Appeals

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