REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HITACHI COMPUTER PRODUCTS (ASIA) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5943

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 06 2001

x - x

DECISION

This Petition for Review seeks for the refund or issuance of a tax credit certificate in the amount of P3,470,534.59 representing unutilized/unapplied value-added taxes (VAT, for brevity) for the period July 1, 1997 to September 30, 1997.

The facts of the case as jointly stipulated by the parties are as follows:

> 1. Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office at the Special Processing Zone, Laguna Technopark, Binan, Laguna. (Paragraph 1 of the Petition for Review and admitted in the Respondent's Answer)
>
> 2. Respondent is the duly appointed Commissioner of Internal Revenue, vested with the authority to act as such, including, inter alia, the power to decide, approve and grant refunds and/or tax credits of excess value-added tax (VAT) input payments and holding office at 5F, BIR National office Building, Diliman, Quezon City, where he may be served with summons and other court processes. (Paragraph 2 of the Petition for Review and admitted in the Respondent's Answer)
>
> 3. Respondent is represented in the said One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center by the Revenue Examiners of the Bureau of Internal Revenue, who are assigned at said Center.

(Paragraph 7 of the Petition for Review and admitted in the Respondent's Answer)

4. Petitioner is primarily engaged in the business of manufacturing electric, electronic and software products and industrial properties, including but not limited to hard disc drive and component parts, and supplies used or employed in or related to the manufacture of such products, exclusively for export.

5. Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer in accordance with Section 107 of the Old Tax Code [now Section 236 of the National Internal Revenue Code of 1997], with Taxpayer Identification Number (TIN) 003-877-830.

6. Petitioner is registered with the Philippine Economic Zone Authority (PEZA) as an Export Enterprise enjoying a six-year income tax holiday incentive pursuant to Section 23 of Republic Act No. 7916 or the Special Economic Zone Act of 1995.

7. On October 20, 1997, Petitioner filed with the Bureau of Internal Revenue (BIR) its Quarterly Value-Added Tax Return for the period, July 1, 1997 to September 30, 1997 which reflected a total net creditable input tax in the amount of P15,580,634.71 arising from its domestic purchases of goods and services.

8. On November 8, 1999, Petitioner filed with the BIR its Amended Quarterly Value-Added Tax Return for the period, July 1, 1997 to September 30, 1997 which reflected a total net creditable input tax in the amount of P3,470,534.59.

9. On September 30, 1999, Petitioner filed with the One-Stop-Shop and Duty Drawback Center of the Department of Finance its application for tax credit/refund of unapplied/unutilized input value-added taxes in the amount of P3,470,534.59 for the taxable period, July 1, 1997 to September 30, 1997.

10. To date, the Respondent has not yet approved the administrative claim for refund of the Petitioner.

Thus, on September 30, 1999, Petitioner elevated the matter with this Court by way of Petition for Review in order to toll the running of the two-year prescriptive period provided under Section 230 of the Tax Code, as amended.

Respondent, in his answer to the said Petition for Review, raised the following Special and Affirmative Defenses, to wit:

"4. Petitioner's alleged claim for tax refund/tax credit is subject to undergoing administrative routinary investigation/examination by the Respondent's Bureau;

5. The alleged refundable/creditable taxes were paid and collected pursuant to law and BIR implementing rules and regulations, hence, the same are not refundable;

6. Claims for tax refund/tax credit are construed in *strictissimi juris* against the taxpayer (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1979, 1 SCRA 95**) as they partake the nature of an exemption from tax, and it is incumbent upon the Petitioner to prove that it is entitled thereto under the law. Failure on the part of the Petitioner to prove the same is fatal to its claim for tax refund/tax credit."

(Respondent's answer, CTA docket pp. 11)

In order to substantiate its claim for refund, Petitioner presented various documentary evidence which have been duly admitted by this Court in its resolution promulgated on October 27, 2000, thus:

1. Articles of Incorporation of the Petitioner (Exhibit A)

2. Certificates of Registration issued by EPZA and BIR (Exhibit B and D)

3. Certificate of Board Resolution No. 94-212 issued by EPZA (Exhibit C)

4. Original and Amended Quarterly VAT Return for third quarter of 1997 (Exhibit E and F)

5. Application for Tax Credit/Refund or BIR Form No. 1914 filed with Department of Finance (Exhibit G)

6. Claimant Information Sheet No. 28085 filed with the One-Stop Shop Inter Agency Tax Credit and Duty Drawback Center of DOF (Exhibit H)

7. Amended Quarterly VAT Return for the 4th Quarter of 1997 (Exhibit J)

8. Report of the Results of the Procedures performed by SGV (Exhibit K)

9. Summary of Input Taxes and Export Sales for 3rd Quarter of 1997 (Exhibits L-1 to :-4; Exhibits N-1 to N-21)

10. Various Invoices, Official Receipts, Export Sales documents and Inward Remittance documents (Exhibits M-1 to M-58; Exhibits O-1 to O-867; Exhibits P-1 to P-25)

On the other hand, counsel for the Respondent failed to present any controverting evidence and instead submitted its case based on the pleadings. Hence, the case was submitted for decision on April 19, 2001, after both parties presented their respective memorandum.

The issues to be resolved by this Court, as jointly stipulated by the parties are as follows:

> 1. Whether or not Petitioner has unapplied/unutilized creditable input value-added taxes as of September 30, 1997 arising from its domestic purchases of goods and services attributable to its zero-rated export sales which can be the proper object of a claim for refund pursuant to Section 112 of the National Internal Revenue Code of 1997;
>
> 2. Whether or not the said creditable input value-added taxes of Petitioner for quarter ended September 30, 1997 are substantiated by documentary evidence in the form of invoices and official receipts; and
>
> 3. Whether or not said unapplied or unutilized creditable input value-added taxes for quarter ended September 30, 1997 were carried over to the succeeding taxable quarter(s) and applied against any output tax liability of the Petitioner for the said period.

Petitioner, in reiterating that he is indeed entitled to the refund of unutilized or excess creditable input VAT arising from domestic purchases of goods and services attributable to its zero-rated export sales, cited as legal bases the provisions of Section 106(a) of the Tax Code (now Section 112 (A)), in relation to Section 100 (a)(2)(A)(i) of the Tax Code (now Section 106(A)(2)(a)(1), hereunder quoted as follows:

> "**SEC. 106**. *Refunds or tax credits of creditable 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 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 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 (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."
>
> "**SEC. 100**. *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, a value-added tax equivalent to 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) x x x
>
> (2) The following sales by a VAT-registered person shall be subject to 0%
>
> (A) Export sales. – The term "export sales" means:
>
> (i) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods and services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Based on the foregoing provisions of law, Petitioner may file a claim for refund or tax credit of its excess and unutilized input VAT credits if the following requirements are satisfactorily met, to wit:

1. it is a VAT-registered person;

2. its sales are zero-rated (or in this case qualifies as export sales as defined by law);

3. the administrative claim for refund is seasonably filed;

4. the input taxes claimed were attributable to zero-rated sales and were not applied against the output tax liability; and

5. foreign currency exchange proceeds has been duly accounted for in accordance with the regulations of Bangko Sentral ng Pilipinas. (citing **Hitachi Computer Products (Asia) Corp. vs. CIR, CTA Case 5651, February 2, 2001 and Hitachi Computer Products (Asia) Corp. vs. CIR, CTA Case 5756, March 15, 2001**).

There is no question that Petitioner satisfactorily complied with the first requirement. It was established that Petitioner is a VAT-registered person as evidenced by the Certificate of Registration dated June 28, 1994, with RDO Control No. 94-570-000298 issued by RDO No. 57 of the Bureau of Internal Revenue (Exhibit D). As to the third requirement, this Court is likewise convinced that the filing of an application for refund/credit with the Respondent on September 30, 1999 (Exhibit G) and the Petition for Review with this Court on the same date fall within the two-year period. True enough, the counting of the two-year period in claiming for refund of input VAT is reckoned from the date of filing of the quarterly VAT return, which in this case is October 20, 1997 (see **Nichimen Corporation Philippine Branch vs. CIR, CTA Case No. 5389, January 4,**

1999). From the said date (October 20, 1997) up to the date of Petitioner's administrative and judicial actions, it is clear that the claims for refund were filed on time.

We now proceed to resolve the issue of whether or not Petitioner met the other above-cited requirements. A careful review of the records of the case as well as the pleadings and evidence at hand, reveals that Petitioner complied with the other requisites, save for some notable exceptions.

Petitioner in its amended Quarterly Value-Added Tax Return for the 3rd quarter of 1997 (Exhibits F & I) declared zero-rated sales of P2,940,100,276.21. However, as verified by the independent CPA, out of the total amount of P2,940,100,276.21 export sales, the amount of P70,440,251.80 were not supported by export documents while the remaining sum of P2,869,660,024.41 were supported by export documents such as Export Sales Invoices, Export Declarations and Airway Bills (Exhibits O-1 to O-867). (See Report of SGV-Exhibit K).

It could be recalled that Petitioner claimed that for the period July 1, 1997 to September 30, 1997, it had unutilized/unapplied input VAT in the amount of P3,470,534.59 arising from domestic purchases of goods and services. To prove that its input VAT remained unapplied and unutilized Petitioner presented the various VAT invoices and official receipts (Exhibits M-1 to M-58). However, the special audit conducted by the independent CPA resulted in the disallowance of the amount of P915,644.65 because they were not properly substantiated for VAT purposes (See Report of SGV, dated June 2, 2000 – Exhibit K). A further verification of this Court of the various invoices and official receipts resulted to the additional disallowance of the input VAT for the following reasons:

SUPPLIER	EXHIBIT	REFERENCE NO.		AMOUNT		INPUT VAT
(a) Invoices/official receipts with no authority to print						
MANILA INTL FREIGHT FORWARDERS	M-34	1153	P	442,192.19	P	40,199.29
MANILA INTL FREIGHT FORWARDERS	M-31	1199		518,563.98		47,142.18
MANILA INTL FREIGHT FORWARDERS	M-55	1243		716,046.98		65,095.18
	Subtotal		P	**1,676,803.15**	P	**152,436.65**
(b) Invoices/official receipts with no dates						
PHILIPPINE GEOANALYTICS	M-16	27289		3,630.00		330.00
PINPIN SECURITY & PROTECTIVE AGENCY	M-40	18922		124,551.79		11,322.89
	Subtotal		P	**128,181.79**	P	**11,652.89**
(c) No supporting document						
PACIFIC ECOLOGY & ENVIRONMENT				170,115.00		15,465.00
PACIFIC ECOLOGY & ENVIRONMENT				211,846.25		19,258.75
PHPC CO., LTD.				23,540.00		2,140.00
	Subtotal		P	**405,501.25**	P	**36,863.75**
(d) Not within the period of claim						
CORPORATE INSURANCE BROKERS	M-3 to M-5	various		10,362,317.90		942,028.90
HI-ELES CORP.	M-8	49749		2,970.00		270.00
	Subtotal		P	**10,365,287.90**	P	**942,298.90**
	Total		P	**10,898,970.94**	P	**990,815.54**

Hence, out of the amount of P3,470,534.59 input taxes being claimed by Petitioner, only the amount of P1,564,074.40 were properly substantiated, computed as follows:

Amount Claimed		P3,470,534.59
Less: Disallowances		
(a) Per SGV's verification (Exh. K)	P915,644.65	
(b) Per Court's verification	990,815.54	1,906,460.19
Amount Refundable		P1,564,074.40

The unapplied/unutilized creditable value-added taxes for the period July 1, 1997 to September 30, 1997 in the amount of P3,470,534.59 although carried-over to the succeeding taxable quarter, October 1, 1997 to December 31, 1997 (Exhibit J-1), were deducted from the total available input tax of the same quarter and can be found in the box "Less: Any VAT Refund/TCC Claimed (Exhibit J-2). Hence, the unapplied/unutilized creditable value-added taxes were no longer carried-over to the succeeding taxable quarter(s).

Lastly, Petitioner was able to prove that the foreign currency exchange proceeds in US dollars, representing export inward remittances, were credited to its US dollar accounts. These inward remittances representing payments of export sales were supported by certifications from Rizal Commercial Banking Corporation (RCBC) and Pilipinas Bank (Exhibits P-2 to P-5) and partly corroborated by Petitioner's passbook from RCBC (Exhibits P-19 to P-25).

Respondent, in his memorandum, raised the issue that since Petitioner is registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Enterprise then its business is not subject to VAT pursuant to Section 24 of Republic Act No. 7916. It follows then that Petitioner is not allowed any input tax credit previously paid pursuant to Section 4.103-1 of Revenue Regulations 7-95.

The above issue raised by the Respondent has already been settled by this Court in the case of **READ-RITE PHILIPPINES, INC. (Formerly Sunward Technologies Phils., Inc.) vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No 5659, dated September 29, 2000**, where we ruled:

> "This Court would like to stress that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise to wit:
>
> > Sec. 23. Fiscal Incentives. – Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone authority, **or** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."
>
> Based on the aforequoted Section 23 of RA 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One is that which is provided for under Presidential Decree No. 66, as amended and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes; and second as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax. The difference between these 2 sets of fiscal incentives were explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99 and 063-99." (See also this Court's Resolutions in the cases of **SEAGATE TECHNOLOGY (PHILIPPINES) vs. COMMISSSIONER OF INTERNAL REVENUE, CTA Case No. 5921, dated September 20, 2000 and TOSHIBA INFORMATION EQUIPMENT (PHILS) INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5762, dated January 17, 2001**).

The aforementioned ruling has been affirmed by the Court of Appeals in the case entitled **CIR vs. Seagate Technology CP-G.R. SP No. 61189 promulgated on June 18, 2001**.

Records show that Petitioner is subject to VAT and is enjoying an income tax holiday as evidenced by the Certificate of Board Resolution from the Philippine Export

Zone Authority (Exhibit C). This was confirmed by Petitioner's witness, Mr. Lyndon V. Padua, General Accounting Analyst, in his testimony given during the hearing held on February 9, 2000.

> Q: Mr. Witness, do you know if your company, the petitioner in this case, is availing its income tax holiday incentives under the law?
>
> A: Yes.
>
> Q: What kind of incentives are you availing?
>
> A: It is availing of income tax holiday incentives provided by Republic Act No. 7916.
>
> Q: Mr. Witness, what is your basis for saying that the petitioner in this case is availing of income tax holiday incentives?
>
> A: The Registration Agreement with the Philippine Economic Zone Authority.
>
> Q: I would like to clarify, Mr. Witness. Do you mean that the grant of income tax holiday to petitioner in this case is contained in the Registration Agreement which you earlier mentioned?
>
> A: It is actually contained in the Certificate of the Board Resolution of EPZA.

It could be gleaned from the above testimony of Petitioner's witness, that they availed of the fiscal incentive under Republic Act No. 7916 which is the income tax holiday. This shows that Petitioner, though exempt from payment of income tax, is still subject to other national internal revenue taxes including the value-added tax. Being subject to the value-added tax, Petitioner may well claim a refund of any input tax which remained unutilized and unapplied up to this time.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner, the reduced amount of **P1,564,074.40** representing the unutilized/unapplied Value Added Taxes for the period July 1, 1997 to September 30, 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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