REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MICROSOFT PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6101

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 17 2003

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DECISION

This case involves a claim for refund in the amount of P598,458.35 representing petitioner's input VAT attributable to its zero-rated sale of services for the quarter covering January 1, 1998 to March 31, 1998.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, with principal office address at the 22/F Tower 2 The Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas, Makati City. *(par. 1, Stipulation of Facts)*. It is a duly registered VAT taxpayer as evidenced by Certificate of Registration bearing RDO Control No. 96-047-006781 (*Exhibit "A"*).

Petitioner renders services to Microsoft Corporation, a non-resident foreign corporation, where such services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

On May 25, 1998, petitioner filed its VAT return for the first quarter of 1998, declaring taxable sales amounting to P6,548,570.80 with corresponding output tax in the amount of P654,857.08 which was offset against the VAT input tax carried over from previous quarter in the amount of P3,810,103.52 and from domestic purchases of goods and services in the amount of P893,662.85, leaving excess VAT credits in the amount of P4,048,909.29 (*Exhibit "F"*).

Petitioner alleged that the excess VAT credits of P4,048,909.29 included the sum of P598,458.35 representing the excess input tax for the 1st quarter of 1998 attributable to its zero-rated sale of services in the amount of P5,984,583.46. According to petitioner, these VAT input taxes have not been applied against any VAT output tax and are duly supported by VAT invoices and/or official receipts.

Thus, on March 30, 1999, a claim for refund of VAT input taxes for the first quarter of 1998 in the amount of P598,458.35 was filed with Revenue District Office No. 47-East Makati (*Exhibit "B"*). To toll the running of the two-year prescriptive period, the instant petition for review was filed on April 24, 2000.

Respondent filed his Answer on July 21, 2000 and raised the following special and affirmative defenses:

1. Petitioner's claim is already barred by the statute of limitations;
2. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

3. Petitioner failed to show that the alleged VAT input taxes are attributable to its export sales and that the same have not yet been applied to the output tax for the period covered in its claim or on any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Bangko Sentral ng Pilipinas and it also failed to show that it is qualified as zero-rated VAT taxpayer;
4. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner Internal Revenue, 67 SCRA 35);
6. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);
7. 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;
8. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code; and
9. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable.

On May 24, 2001, petitioner filed an Amended Quarterly VAT Return for the first quarter of 1998 (*Exhibit "LL"*).

The issue we are tasked to resolve have been stipulated by the parties to be as follows: Whether or not petitioner is entitled to a refund of P598,458.35 representing VAT input taxes paid on purchases of domestic goods and services attributable to zero-rated sales. The resolution of this issue shall depend on:

6.1 Whether the administrative claim for refund has been filed within the 2-year prescriptive period;

6.2 Whether the Petition for Review has been filed within the 2-year prescriptive period;

6.3 Whether the input taxes subject of the claim for refund are paid on purchases of domestic goods and services attributable to zero-rated sales;

6.4 Whether the input taxes subject of the claim for refund are not applied against output taxes; and

6.5 Whether the input taxes subject of the claim for refund are duly supported and substantiated by VAT Invoices and/or VAT Official Receipts.

Petitioner anchored its claim for refund on the following provisions of the 1997 Tax Code:

> **Section 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties.*** –
>
> (A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase '*sale or exchange of services*' means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities ; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances) including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) x x x
(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); x x x"

Section 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): *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.
>
> xxx xxx xxx"

Records show that the administrative claim for refund filed on March 30, 1999 and the judicial claim for refund filed on April 24, 2000 were both filed within the two-year prescriptive period reckoned from May 25, 1998, the date when the quarterly VAT return was filed ***(Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, Resolution, CTA Case No. 5296, July 20, 1998).*** In paragraph 7 of its Petition for Review, petitioner alleged that its administrative claim for refund for the first quarter of 1998 was filed on March 30, 2000. However, records show that it was actually filed on March 30, 1999 (*Annex "A", Petition for Review; Exhibit "B"*). Notwithstanding the difference in the actual date of filing and the allegation of petitioner, the administrative claim for refund was still timely filed.

As to whether or not the input taxes subject of the claim for refund were paid on purchases of domestic goods and services attributable to zero-rated sales, we rule in the negative.

An examination of the records of this case would disclose that petitioner failed to declare its zero-rated sales of services in its original 1998 first quarterly VAT return (*Exhibit "F"*). In the case of ***Nichimen Corporation (Manila Branch) vs. The***

Commissioner of Internal Revenue, CTA Case No. 5637, March 2, 2001, this court denied petitioner's claim for refund of input taxes for its failure to declare its zero-rated sales in its quarterly VAT return, thus:

> "It is clear from the aforequoted provision of the Tax Code that the prerequisite to the refund of creditable input tax is the categorical showing of zero-rated sales in a claimant's VAT return. However, contrary to what is required, petitioner only declared in its 1996 first quarterly VAT return a VAT taxable sale of P118,181.80 which resulted to an output tax of P11,818.18. As no zero-rated sales were declared by the Petitioner in its return, this Court is incapable of determining the very basis from which the amount of creditable input tax could be computed.
>
> In an effort to prove its foreign currency inward remittances, Petitioner offered in evidence various bank credit advices (Exhs. A-2 to A-22) issued by Rizal Commercial Banking Corporation which account for the total foreign exchange receipts of Petitioner for the indenting services it rendered for the year 1996.
>
> However, these bank credit advices have little probative value. The remittances cannot be possibly linked to sales of 1996 since there was no declaration of zero-rated sales in the VAT returns during the year. In addition, there was no collaborating evidence such as sales invoices to support its claim that there were vatable sales."

In its effort to prove its zero-rated sales, petitioner presented the Credit Advices from Citibank *(Exhibits "OO", "PP" & "QQ")* and the report of the commissioned independent CPA *(Exhibit "HH").* In said report, the following findings were noted:

> "Based on the procedures we performed, we noted that the Company's export revenue per "Schedule of Service Revenue" was properly supported by bank remittance advice, bank statements and bank certifications. Moreover, we were able to ascertain that the amount of export revenue per "Schedule of Service Revenue" ties up with the amount of export revenue recorded in the Company's books. We noted, however, that the Company does not issue service invoices/official receipts for its receipts of service revenue from Microsoft Corporation. However, we were able to trace against the Company's accounting records (i.e., journal

> vouchers and General Ledgers) that the amount received from Microsoft Corporation as evidenced by the bank remittance advices, etc. are reported in the books as Company's revenues."

Despite the presentation of the bank credit advices and the CPA report, this court finds that petitioner still failed to prove its alleged zero-rated sale of services on account of the following:

First, the credit advices do not bear any explanation as to whether the remittances are for payment of sales of services of petitioner. Moreover, these credit advices failed to state the conversion rate into Philippine currency and the total peso value thereof, in violation of Section 16(c)(ii) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, which provides, viz:

> "SEC. 16. Refunds or tax credits of input tax.-
>
> (c) x x x
>
> 2. x x x
>
> ii) statement from the Central Bank of 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.
>
> 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."

Second, the accounting records, such as journal vouchers and general ledgers, mentioned by the commissioned independent CPA which will corroborate petitioner's service revenue, were not presented in evidence. Hence, the accuracy of said findings cannot be verified.

Also, the Parent-Subsidiary Agreement (*Exhibit "MM"*) executed between petitioner and its parent corporation, Microsoft Corporation, a Washington Corporation, failed to comply with Section 16(c)(2)(i) of Revenue Regulations No. 5-87, as amended which provides:

> "SECTION 16. Refunds or tax credits of input tax.-
> (c) x x x
> 1. x x x
> 2. Zero-rated sales of services.
>   i) authenticated copy of the contract showing the person from whom the services were rendered, the amount of the consideration and description of the services and document *evidencing actual payments.*
>   ii) x x x

Records disclose that petitioner failed to issue official receipts to Microsoft Head Office which is contrary to their agreement (*Payment Terms under Schedule A to Parent-Subsidiary Agreement*) and a violation of Section 113 of the 1997 Tax Code, in relation to Section 29 of Revenue Regulations No. 10-94, pertinent portions of which state:

> "SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.-
>
> (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."

"SEC. 29. (a) Invoicing Requirements.- All VAT-registered person 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) A statement that the seller is a VAT-registered person, followed by his TIN; and
(2) The total amount which the purchaser pays or is obligated to pay to the seller."

Finally, it is significant to note that while petitioner amended its 1998 first quarterly VAT return on May 24, 2001 declaring zero-rated sale of services amounting to P17,843,057.52 (*Exhibit "LL"*), the same may not be considered. This is because on April 11, 2000, Letter of Authority No. 17841 (*Exhibit "1"*) was issued by respondent and received by petitioner on April 25, 2000 (*which petitioner erroneously dated April 25, 1999*). Under Section 6(A) of the 1997 Tax Code, a return may only be amended within three years from the date of filing if no notice for investigation has, in the meantime, been actually received by the taxpayer, thus:

"SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –

(A) Examination of Returns and Determination of Tax Due.- x x x

"Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer." (Underlining supplied)

Clearly, since at the time of filing of its amended return petitioner has long been in receipt of the letter of authority, the amendment made by petitioner is no longer permissible.

As tax refunds are in the nature of tax exemptions and regarded as in derogation of sovereign authority, they should be construed *strictissimi juris* against the claimant. ***(Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377).***

WHEREFORE, in the light of all the foregoing, the instant claim for refund of input VAT on petitioner's zero-rated sale of services is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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