REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EASTERN TELECOMMUNICATIONS-
PHILS., INC.,

Petitioner,

- versus -

C.T.A. CASE NO. 5551

THE COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:
JUL 17 2000

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DECISION

Presented before Us for decision is a claim for refund of unutilized value-added tax (VAT, for brevity) on importation of capital goods in the amount of P22,013,134.00, for the period July 1, 1995 to December 31, 1996.

Petitioner is a domestic corporation organized and existing under the laws of the Philippines. It is a grantee of a legislative franchise under Republic Act No. 7617, dated June 25, 1992. Its main functions include the installation, operation and maintenance of telecommunication systems throughout the Philippines. As a franchisee, it is allegedly subject to 3% franchise tax under Section 10 of RA 7617.

For the period July 1, 1995 to December 31, 1996, Petitioner purchased various imported equipment, machineries and spare parts necessary in carrying out its business activities. The importation of these telecommunication equipment were subjected to 10% input VAT by the Bureau of Customs.

Believing that it is exempt from the payment of input VAT by virtue of the "in lieu of all taxes" proviso under Section 10 of R.A. 7617, and Section 23 of R.A. 7925, Petitioner on September 19, 1997, filed with the Respondent a written application for refund/credit of erroneously paid input VAT in the amount of P22,013,134.00. Petitioner further cites the decision rendered by this Court in the case entitled **PLDT vs. The Honorable Commissioner of Internal Revenue, CTA Case No.5106, dated December 18, 1995** and the provision of Section 106(b) of the National Internal Revenue Code, as amended.

Petitioner also presents an alternative legal basis for its claim for refund in Section 106(b) of the 1996 Tax Code (now Section 112(b) of the Tax Reform Act of 1997) which provides that a VAT-registered taxpayer may apply for tax credit or a claim for refund of input taxes paid on purchases of capital goods imported or locally purchased, to the extent that such input taxes have not been applied.

Without waiting for an action from the Respondent, Petitioner instituted the instant appeal on September 25, 1997, in order to toll the running of the two-year prescriptive period under the law.

In his Answer, Respondent raised the following Special and Affirmative Defenses:

> 6. Petitioner's claim for refund/tax credit is pending administrative investigation;
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> 7. The cited C.T.A. Case No. 5106, entitled "PLDT v. CIR" is pending appeal before the Court of Appeals. Hence, the decision therein does not constitute a precedent applicable in the instant case;
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> 8. The petitioner's exempting clause under its legislative franchise (Sec. 10, Republic Act No. 7617) should be understood or interpreted as written, meaning, the 3% franchise tax shall be collected as substitute for any

internal revenue taxes, other than those which the grantee is made expressly liable, imposed on its franchise or gross receipts/earnings thereof, VAT on sale of services, or tax on overseas dispatch, message, or conversation transmitted from the Philippines as prescribed under the provisions of Sections 102 and 118 of the Tax Code, as amended;

9. The value-added tax (VAT) on importation under Section 101 of the Tax Code, as amended is neither a tax on franchise nor on gross receipts or earnings thereof. It is a tax on the privilege of importing goods whether or not the taxpayer is engaged in business, and regardless of whether the imported goods are intended for sale, barter or exchange;

10. The VAT under Section 101(a) of the Tax Code, as amended, replaced the advance sales tax and compensating tax under then Sections 162(c) and 169 of the Tax Code. Accordingly, the 3% franchise tax did not substitute the 10% value added tax on Petitioner's importation of equipment, machineries and spare parts for the use of its telecommunication system;

11. Tax refunds are in the nature of tax exemptions. As such, they are regarded in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption. The burden is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implication. (Asiatic Petroleum Co. v. Llanes, 49 Phils. 466; Northern Phils. Tobacco Corp. vs. Mun. of Agoo, La Union, 31 SCRA 968; Asturias Sugar Central Inc. v. Com. of Customs, 29 SCRA 617). Thus, when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it and a well founded doubt is fatal to the claim (Manila Electric Co. v. Vera, L29987, October 22, 1975; Manila Electric Co. v. Tobias, L-23847, Oct. 22, 1975, 67 SCRA 451);

12. Taxes paid and collected are presumed to have been made in accordance with the laws and regulations; and

13. It is incumbent upon the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the claim for refund.

The issues to be resolved by this Court are as follows:

1. Whether or not Petitioner is exempt from the payment of value-added tax on its importation of various equipment, machineries and spare parts pursuant to the "in lieu of all taxes" proviso of Section 10 of R.A. 7617, or in the alternative;

2. Whether or not Petitioner is entitled to the claim for refund of unapplied input VAT on capital goods pursuant to Section 106(b) of the National Internal Revenue Code, as amended by Republic Act 7716; and

3. Whether or not Petitioner was able to support with substantial evidence its entitlement to the claim for refund.

After a careful study of the applicable law and existing jurisprudence, the first issue which constitutes the original legal basis of the claim for refund is resolved against the Petitioner. The "in lieu of all taxes" proviso found under Section 10 of Republic Act No. 7617 has been superseded by the passage of Republic Act No. 7716 popularly known as the Expanded VAT Law, which became effective on May 28, 1994[1], amending among others, Section 117 of the Tax Code to exclude franchisees on telephone and telegraph systems, and radio broadcasting stations and other franchise from payment of the franchise tax, instead subjecting these companies to pay the VAT[2]. **(Tolentino vs. Secretary of Finance, 249 SCRA 628;** *see also* **Philippine Global Communications, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5400, dated October 2, 1997).** Please note that the case of **PLDT vs. CIR, CTA Case No. 5106 dated December 18, 1995**, covers value added tax prior to the effectivity of R.A. 7716, hence not applicable in the instant case.

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[1]Published in Malaya Newspaper on May 12, 1994.

[2]See Section 8(f) of Revenue Regulations No. 10-94, the New VAT Law Implementing Regulations.

(105)

Since Petitioner, being a holder of a telecommunications franchise, is no longer subject to franchise tax by the enactment of RA 7716 and is now made liable to pay VAT, the "in lieu of all taxes" proviso under its franchise is no longer a valid legal basis for its claim for refund. It is to be noted that Petitioner is claiming exemption from payment of VAT for the period July 1, 1995 to December 31, 1996, when the E-VAT Law was already effective.

The more viable legal basis for the claim for refund is Section 106(b) of the 1996 Tax Code which incidentally is the alternative presented by the Petitioner and which also substitutes the second issue in this case.

Under Section 106(b) of the 1996 Tax Code, this Court is convinced that Petitioner is entitled to the refund of creditable input tax on capital goods, and we quote:

> **SECTION 106.** ***Refunds or tax credits of creditable input tax.*** — (a) xxx
>
> (b) *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 may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

It is clear from Petitioner's quarterly VAT returns that it is a VAT registered person (Exhs. O to S). The import entry declarations, Bureau of Customs payment forms together with the Bureau of Customs official receipts, checks issued in favor of the Bureau of Customs and the official receipts of Hongkong Shanghai Bank Corporation, prove that Petitioner imported capital equipment from which a 10% input VAT were imposed (Exhs. I to L). It was also established that the input taxes sought herein remain unapplied as evidenced by the 1997 first quarterly VAT return of Petitioner (Exh. S). The accumulated input taxes as of December 31, 1996, in the amount of P25,875,858.18 (Exh. R) were not carried-over to the first quarter of 1997. Lastly, Petitioner was able to prove that the administrative claim for refund with the Respondent and the Petition for Review with this Court were seasonably filed within the two-year period (**Resolution, Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296, dated July 20, 1998**).

As regards the last issue, Petitioner submitted the report of the commissioned independent auditor together with its supporting documents. The Court verified such report and finds the same to be in order (Exhs. H to L). Out of the total claim for refund in the amount of P22,013,134.00, only the amount of P21,487,702.00 was properly documented, to wit:

1. Our comparison of VAT claim as refund as against VAT paid per supporting schedule disclosed the following discrepancy:

VAT Claimed as Refund	P	22,013,134.00
VAT Paid Per Supporting Schedule		21,973,134.00
Difference - VAT Claimed is Overstated by	P	40,000.00

2. Based on our review of the documents supporting VAT on importation, we present below our findings:

Findings	Amount of VAT Claimed							
	1995			1996			Total	
With Proper Supporting Documents:								
* Supported by Bank ORs, and Certified True Copies of Final IEDs and/or Original Copies or Certified True Copies of Broker's IED; or Supported by Bank Ors and Photocopy of broker's IED ("A")	P	3,673,330.00	Annex A-1	P	15,403,119.00	Annex B-1	P	19,076,449.00
* Supported by Checks duly validated by HSBC, and Certified True Copies of Final								

IEDs and/or Original Copies or Certified True Copies of Broker's IED; or Supported by Checks duly validated by HSBC and Photocopy of Broker's IED ("B")		1,585,272.00	Annex A-2		825,981.00	Annex B-2		2,411,253.00
Subtotal	P	5,258,602.00		P	16,229,100.00		P	21,487,702.00
Supported only by Final IED (no machine validation to support payment of VAT)		0			58,768.00	Annex B-3		58,768.00
Supported by Bank ORs only, the amount of VAT paid cannot be determined since it could not be ascertained if the payments represent VAT only or are inclusive of customs duties and import processing fees		48,984.00	Annex A-3		324,632.00	Annex B-4		373,616.00
Supported by Checks duly validated by HSBC only, the amount of VAT paid cannot be determined since it could not be ascertained if the payments represent VAT only or are inclusive of customs duties and import processing fees		19,260.00	Annex A-4		0			19,260.00
VAT Paid On Importation Without Supporting Documents (Bank ORs, IEDs, BOC Ors)		33,788.00	Annex A-5		0			33,788.00
Total VAT Paid on Importation, Per Schedule	P	5,360,634.00		P	16,612,500.00		P	21,973,134.00

However, the Court deemed it proper to exclude input taxes on imported equipment for the year 1995 even when these were properly documented due the fact that they were already booked by Petitioner as part of the cost. This was admitted by Petitioner's witness during the session held on March 19, 1998, to quote:

DIRECT EXAMINATION BY ATTY. ARAÑAS:

Q. Ms. Witness, are you familiar with the circumstances of this case?

A. Yes, I do, (sic).

Q. Ms. Witness, can you explain to this Honorable why for the taxable year 1995, Eastern Telecommunication did not file any V.A.T. return?

A. For the year 1995, Eastern Telecommunication was not subject to the claim. Therefore, any V.A.T. is **part of the cost**. (Underscoring supplied, TSN, May 19, 1998, p. 4).

Since the input VAT for the year 1995 already formed part of the cost of the imported capital equipment, Petitioner can no longer claim for the refund of such creditable input VAT, because once an input tax becomes part of the cost of the capital equipment, it will necessarily form part of depreciation, so to grant Petitioner the refund of 1995 creditable input tax will be tantamount to giving Petitioner the benefit of such tax twice.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby *PARTIALLY GRANTED*. Petitioner's claim for refund for the year 1995 is hereby **DENIED** for lack of merit while Petitioner's claim for refund for the year 1996 is **GRANTED**. Respondent is ***ORDERED to REFUND*** in favor of the Petitioner the amount of P16,229,100.00, representing input VAT on imported capital goods.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

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