REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PROFESSIONAL SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7280

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

FEB 24 2009 2:10pm

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DECISION

CASANOVA, *J.*:

Nature of the Case

The Petition for Review seeks for refund or issuance of tax credit certificate in the amount of P75,323,454.55 allegedly representing unutilized input value-added tax (VAT) paid on the purchase of capital goods covering the period of March 2002 to June 2004.

Statement of the Facts

The facts of the case as recited in the parties' Joint Stipulation of Facts and Issues:

Petitioner, PSI Development Corporation, is duly organized under the laws of the Philippines, with principal office at the Medical City Building, San Miguel Avenue corner Lourdes Road, Mandaluyong City.[1] Petitioner was issued with Securities and Exchange Commission (SEC) Certificate of Registration No. A200011403 dated August 7, 2000,[2] and is licensed to engage in the development and management of buildings, houses, apartments and other structures and immovables.[3] Likewise, petitioner is registered with the Regional District Office (RDO) No. 41 of the Bureau of Internal Revenue (BIR) in Mandaluyong City as a VAT taxpayer engaged in real estate buying, developing, subdividing, and selling; with Tax Identification Number (TIN) No. 207-524-318-000 and OC No. 3RC0000087275 dated August 30, 2000.[4]

On the other hand, respondent, Commissioner of Internal Revenue, is vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law.[5]

Petitioner had caused the construction of the "Medical Arts Tower" and is the owner thereof.[6] Hence, petitioner claimed that it is entitled to a refund or issuance of tax credit certificate of the input VAT incurred on the purchase of capital goods/property.

Consequently, petitioner filed a formal claim for refund or issuance of tax credit certificate with respondent's Revenue District No. 41 of Mandaluyong, on June

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[1] Paragraph 2, Page 1, Joint Stipulation of Facts and Issues (JSFI); Page 104, CTA Records
[2] Ibid.
[3] Paragraph 4, Page 2, JSFI; Page 105, CTA Records
[4] Paragraph 3, Page 2, JSFI; Page 105, CTA Records
[5] Paragraph 1, Page 1, JSFI; Page 104, CTA Records
[6] Paragraph 5, Page 2, JSFI; Page 105, CTA Records

30, 2005; and on the same day filed the present Petition for Review[7] for the period to claim was about to lapse.

Respondent, in his Answer[8] and by way of Special and Affirmative Defenses[9] averred the following:

> "6. The claim for refund is still under examination by the respondent Bureau;
>
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 8. The grant of a claim for refund [is] tantamount to an exemption from taxation which is strictly construed against the claimant and in favor of the taxing authority;
>
> 9. The power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate must be strictly construed and the same must be couched in clear and unmistakable terms in order that it may be applied. (Floro Cement Corporation vs. Gorospe, G.R. No. 46787, [August] 2, 1991)[;]
>
> 10. In Statutory construction, in cases of ambiguities, the principle that the contemporaneous construction of a statute given by executive officers of the government whose duty is to execute it is entitled to great respect and should ordinarily control the construction, is so firmly embedded in our jurisprudence that no authorities need be cited to support it. (Phil. Assoc. of Free Labor Unions vs. BLR). Executive officials are presumed to have familiarized themselves with all the consideration pertinent to the meaning and purpose of the law and to have formed an independent, conscientious and competent expert opinion thereon (Richard vs. Drewry-Hughes Co. 94 S.E. 989)[;]
>
> 11. Assuming, without admitting, that the petitioner is entitled to a refund, the period covered by this instant claim shall be within two-year period from June 30, 2003 to June 30, 2005; and
>
> 12. The petitioner filed his administrative claim for refund on June 30, 2005, or the same day it caused the filing of this instant petition, depriving the respondent the opportunity to examine and investigate the said instant claim."

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[7] Pages 1-7, CTA Records
[8] Pages 82-84, CTA Records
[9] Paragraphs 6-12, Page 2, Answer; Page 83, CTA Records

Petitioner filed its Petitioner's Pre-Trial Brief on September 19, 2005,[10] while respondent filed its Pre-Trial Brief for the Respondent on September 22, 2005.[11] Pre-Trial was held on September 23, 2005,[12] and in a Resolution[13] dated October 14, 2005, the parties' Joint Stipulation of Facts and Issues[14] filed on October 10, 2005 was admitted by this Court.

In a Resolution[15] dated June 18, 2007, the Court resolved petitioner's Formal Offer of Evidence[16] filed on April 18, 2007, admitting Exhibits A to MM, inclusive of all submarkings thereon.

In a Manifestation and Motion for Substitution of Party[17] filed on April 30, 2008, petitioner, PSI Development Corporation, manifest that a merger was executed between it and Professional Services, Inc., with the latter as the surviving corporation. Hence, in a Resolution[18] dated May 27, 2008, the Court granted petitioner's motion and amended the caption of the present case.

Upon oral motion of respondent's counsel during the hearing on May 15, 2008 submitting the case for decision considering that no report of investigation was forwarded to her,[19] the Court, in a Resolution[20] dated May 19, 2008, ordered the parties to submit their respective memoranda.

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[10] Pages 89-96, CTA Records
[11] Pages 98-99, CTA Records
[12] Page 103, CTA Records
[13] Page 110, CTA Records
[14] Pages 104-106, CTA Records
[15] Pages 159-160, CTA Records
[16] Pages 143-157, CTA Records
[17] Pages 171-173, CTA Records
[18] Pages 200-201, CTA Records
[19] Page 196, CTA Records
[20] Page 198, CTA Records

In a Resolution[21] dated July 14, 2008, the case was submitted for decision taking into consideration the Memorandum[22] filed by the petitioner on July 8, 2008, *sans* respondent's Memorandum.

Hence, this decision.

Issues

The parties stipulated on the following issues:[23]

I

Whether petitioner incurred input VAT on local purchases of construction materials/services which were utilized in the construction of petitioner's new building;

II

Whether the accumulated input VAT of Seventy Five Million Three Hundred Twenty Three Thousand Four Hundred Fifty Four and 55/100 Pesos (P75,323,454.55) arising from petitioner's purchases of construction materials/services in the construction of petitioner's building would qualify as input taxes paid on capital goods, and if so, whether the same is duly substantiated by VAT-registered invoices and receipts; and

III

Whether the excess input tax being claimed for refund were applied against any output tax during the period covered by the claim and in the succeeding periods prior to the start of the commercial operations of the petitioner.

Parties' Arguments

Petitioner argues that so long as it was established that the building is "used" by petitioner in its business and is subject of depreciation or amortization, the same is considered as a capital goods. Petitioner cites the case of **Filinvest Development Corporation vs. Commissioner of Internal Revenue,**[24] wherein

[21] Page 220, CTA Records
[22] Pages 207-219, CTA Records
[23] Paragraphs 1-3, Pages 2-3, JSFI; Pages 105-106, CTA Records
[24] G.R. No. 146941, August 9, 2007

the Supreme Court gave due course to the claim despite non-submission of its annual Income Tax Return.

On the other hand, respondent asserts that petitioner filed its administrative claim on June 30, 2005, the same day the judicial claim was filed before this Court; hence, depriving respondent of the opportunity to examine and investigate the claim. Further, even assuming without admitting that petitioner is entitled to a refund, the period covered by its claim should be within the two-year prescriptive period, or only from June 30, 2003 to June 30, 2005.

Court's Ruling

For refund or tax credit of input tax on domestic purchases of capital goods, Section 112(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides as follows:

> "**SECTION 112.** *Refunds or Tax Credits of 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 within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Hence, petitioner has to prove the following:

a. That it is a VAT registered entity;
b. That input taxes were paid on capital goods imported or locally purchased;
c. That such input taxes were not applied against any output VAT liability; and
d. That the claim for refund was filed within the two-year prescriptive period.

There is no doubt that petitioner is a VAT-registered entity.[25]

Petitioner is registered with the Regional District Office (RDO) No. 41 of the BIR as a VAT taxpayer engaged in real estate buying, developing, subdividing, and selling, with TIN No. 207-524-318-000 and OC No. 3RC0000087275 dated August 30, 2000.[26] With this, petitioner is left to prove the following:

I. Whether or not the claim was filed within the prescriptive period;

II. Whether petitioner's input taxes were paid on capital goods imported or locally purchases; and

III. Whether the input taxes were not applied against its output liability.

Claim within the prescriptive period

The parties stipulate that petitioner has seasonably filed both the administrative claim and the present Petition for Review within the two (2) year period.[27]

In the Petition for Review, petitioner claims the amount of P75,322,454.55 allegedly representing input VAT incurred on its purchase of capital goods for the period from March 2002 to June 2004.

Petitioner filed its administrative claim and Petition for Review on June 30, 2005. As correctly put by respondent and in compliance with the two-year prescriptive period, the period covered for refund should be from June 30, 2003. Hence, transactions prior to June 30, 2003 will have to be denied for being outside of the prescribed period.

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[25] Exhibit "B"
[26] Paragraph 3, Page 2, JSFI; Page 105, CTA Records
[27] Paragraph 7, Page 2, JSFI; Page 105, CTA Records

As to respondent's contention that it was deprived of the opportunity to examine and investigate the claim for petitioner filed both administrative and judicial claim on the same day, the Court rules in the negative.

Section 229 of the 1997 Tax Code provides that in any case, no suit or proceeding shall be filed after the expiration of the two-year period after the payment of the tax or penalty regardless of any supervening cause that may arise after payment.

Both the administrative claim and the judicial claim must be filed within the two-year period[28] for no suit or proceeding can be instituted after the said period. So long as an administrative claim was filed prior to the filing of a judicial case, both within the prescriptive period, the taxpayer's claim may prosper.

Input taxes on capital goods

Petitioner claims that the P75,323,454.55 represents its input VAT incurred on its purchase of capital goods, broken down as follows:

Year	Quarter		Input Tax	Exhibit
2002	Second	P	0.00	
	Third		0.00	
	Fourth		0.00	
2003	First		0.00	
	Second		25,431,454.55	"Z-7"
	Third		38,290,818.18	"CC-7"
	Fourth		7,010,272.73	"FF-7"
2004	First		4,590,909.09	"GG-7"
Total		**P**	**75,323,454.55**	

A discrepancy was noted between the total input VAT supported by Official Receipts as against the input VAT reflected in the Quarterly VAT Returns. A

[28] Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., 22 SCRA 12

summary of the following Official Receipts issued by Summa Kumagai, Inc. – Kumagai Gumi Joint Venture, the main contractor of the entire Medical City complex, are as follows:

Vendor	Date	OR Number		Amount		Input VAT	Exhibit
SKI-KG	April 23, 2003	223	P	141,321,000.00	P	12,847,363.64	"E"
SKI-KG	June 02, 2003	224		138,425,000.00		12,584,090.91	"F"
SKI-KG	July 02, 2003	225		64,157,000.00		5,832,454.55	"G"
SKI-KG	July 16, 2003	226		64,157,000.00		5,832,454.55	"H"
SKI-KG	September 02, 2003	232		67,168,000.00		6,106,181.82	"I"
SKI-KG	September 30, 2003	241		67,168,000.00		6,106,181.82	"J"
SKI-KG	October 31, 2003	246		20,000,000.00		1,818,181.82	"K"
SKI-KG	December 16, 2003	252		57,113,000.00		5,192,090.91	"L"
SKI-KG	January 06, 2004	253		50,500,000.00		4,545,909.09	"M"
			P	669,509,000.00	P	60,909.909.11	

Hence, only the amount of P60,864,454.55 duly supported by Official Receipts will be this Court's reference in petitioner's claim for input VAT paid on purchases of capital goods.

<u>Capital goods or properties</u>

Section 4.106-1(b) of Revenue Regulations No. 7-95, provides as follows:

"**SECTION 4.106-1.** *Refunds or tax credits of input tax –*

(b) *Capital Goods* – Only VAT-registered persons may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be ratable portion corresponding to the taxable operations.

'Capital goods or properties' refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f) [now Section 34 (F)], used

directly or indirectly in the production or sale of taxable goods or services."

A summary of the ORs issued by the main contractor to petitioner had established the payment in the amount of P669,509,000.00, inclusive of VAT, for the construction made thereof.[29]

However, a determination of whether petitioner had established the nature of the capital goods or properties as basis for the grant of refund or issuance of a tax credit must be made. In this, the Court finds that petitioner failed.

In the case of **MSF Tire and Rubber, Inc. vs. Commissioner of Internal Revenue,**[30] the Court denied the refund claim because the documents presented failed to prove that the purchase made can be properly classified as capital goods. To quote:

> "A thorough examination, however, of the above documents failed to show and to convince this Court that indeed the purchase made by petitioner can be classified as 'capital goods,' which may entitle petitioner to claim for a refund of the alleged input VAT paid.
>
> Based on the Lease Agreement, EEI shall cause the purchase, installation, operation and maintenance of a Bunker C Fuel Power Station (the 'Equipment'), which comprises of '2 units of 5.2 Megawatt each brand new Pielstick generating sets and one unit of 1.5 Megawatt high-speed engine and all related equipment necessary for the delivery of a continuous, reliable and sufficient supply of power. . . .' The Equipment clearly has a useful life greater than one year.
>
> However, there is nothing in the records that would prove that the generating sets were treated by petitioner as 'depreciable assets under Section 29(f)'. The second requirement does not only mean that the 'capital goods' is depreciable in nature, as what petitioner has argued, but rather, petitioner must have itself treated the same as its depreciable asset, or as part of its 'properties/assets' in its books. How can petitioner treat the same as depreciable assets when in the first place, the same does not even form part of its properties and assets? The generating sets and accessories

[29] Exhibits "E" to "M"
[30] CTA Case No. 6804, September 14, 2006

> purchased by petitioner that formed part of the Equipment were owned by EEI. The ownership was only transferred to petitioner upon its purchase of the same after its dissolution on March 1, 2001. In fact, the official receipt allegedly evidencing the purchase of two generating sets with accessories and showing the net purchase price was issued on July 17, 2001. Similarly significant is the finding that according to the records of the case, the generating sets were never used by petitioner, either directly or indirectly, in its trade or business. Nowhere in the documents and allegations presented did it reveal that petitioner even used the generating sets in the production or sale of its taxable goods and services. It is noteworthy that after its purchase of the generating sets from EEI, petitioner sold the same to Orix Leasing through the Sale and Purchase Agreement dated February 20, 2003 (Exhibit 'E'). Thus, it cannot be concluded that the generating sets purchased by petitioner may be considered as 'capital assets."

In the case at bar, petitioner maintains that it had sufficiently shown that: the construction costs were paid for; the building is being utilized in its business, and; the claim for input VAT were supported by VAT-registered invoices.

Petitioner, however, failed to validate that it indeed capitalized the payments made and that the related depreciation was recognized. The records of the case are bereft of any evidence for this matter.

In the case of **Filinvest Development Corporation vs. Commissioner of Internal Revenue,**[31] the Supreme Court allowed the claim despite non-submission of an ITR however, the same may not be allowed in the present case. Not only were the ITRs not offered, but, the Books of Accounts (Journal and Ledger) and Audited Financial Statements were likewise not presented.

In sum, save for the official receipts and VAT returns which merely prove that petitioner had indeed paid for the construction cost, petitioner offered no evidence to prove capitalization and depreciation.

[31] G.R. No. 146941, August 9, 2007

To stress, it does not only mean that the capital goods are depreciable in nature, but rather, petitioner must have treated the same as its depreciable asset or as part of its properties/assets in its books. The absence of such is fatal to the present claim.

Albeit the parties stipulated that petitioner's input VAT was not applied against output taxes because the construction of the building was completed only in June 2004, which was also the start of its commercial operations,[32] the same is hereby rendered unavailing to petitioner's claim.

Settled is the rule that claims for refund are in the nature of availing tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Indubitably, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[33] In this case, petitioner failed to discharge its burden.

WHEREFORE, premises considered, the Petition for Review seeking refund or issuance of a tax credit certificate in the amount of P75,323,454.55 allegedly representing input value added tax ("VAT") paid on the purchase of capital goods during the second quarter of 2002 to fourth quarter of 2004 is hereby **DENIED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[32] Paragraph 6, Page 2, JSFI; Page 105, CTA Records
[33] Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 29, 2005 (465 SCRA 308); and Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd., G.R. No. 68242, May 26, 1995 (244 SCRA 332)

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division