REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN EXPRESS INTERNATIONAL, INC. – PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 6099

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 19 2002

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DECISION

This case involves a claim for refund of unapplied or unutilized input VAT paid by petitioner on domestic purchases of goods/services for the period January 1 to December 31, 1998 in the total amount of P3,967,561.06.

Petitioner is a Philippine branch of American Express International, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America. It is a servicing unit of American Express International, Inc. – Hongkong branch, engaged primarily to facilitate the collection of Amex Hongkong's receivables from Amex cardholders residing or situated in the Philippines, as well as the payment of Amex Hongkong to American Express accredited service establishments and merchants in the Philippines.

Petitioner is a Value Added Tax (VAT) entity since March 1988 under VAT Registration Certificate No. 088445 pursuant to Section 107 of the Tax Code, as amended (Exhibit A, Par.1(b) Stipulation of Facts).

On April 13, 1989, the Bureau of Internal Revenue (BIR) issued VAT Ruling No. 080-89 addressed to the petitioner stating, among other things, that:

> "In reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines, your service income is automatically zero rated effective January 1, 1988. [Section 102(a)(2) of the Tax Code, as amended]. For this, there is no need to file an application for zero-rate" (Exhibit B; Par.1(e), Stipulation of Facts).

For the taxable year 1998, petitioner allegedly generated and recorded revenues in the total amount of P81,624,358.33 which were paid for in Hongkong in foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas.* Thus, petitioner asserts that said revenues qualify as zero-rated pursuant to Section 108(B)(2) of the Tax Code as confirmed in VAT Ruling No. 080-89.

For the same period, petitioner allegedly paid input VAT amounting to P3,972,249.24 on its domestic purchases of taxal le goods/services. Petitioner nonetheless claims that its output VAT liability for the period amounted only to P4,688.18 thereby leaving an unutilized input VAT of P3,967,561.06 averred to be directly attributable to its zero-rated sales.

Petitioner filed its quarterly VAT returns for the year 1998 (Exhibits C to F, inclusive). However, on August 25, 1999 it simultaneously amended said returns reflecting the aforementioned zero-rated sales of P81,624,358.33, output VAT of P4,688.18, input VAT payments of P3,972,249.24 and excess input VAT in the amount of P3,967,561.06, broken down as follows:

Exh.	1998	Zero-Rated Sales	Taxable Sales	Output VAT (1)	Input VAT (2)	Excess Input VAT (2) less (1)
M	1st qtr	P 21,773,159.59	P 20,109.40	P 2,010.94	P 737,432.13	P 735,421.19
N	2nd qtr	19,152,510.17	9,992.90	999.29	1,005,257.49	1,004,258.20
O	3rd qtr	16,717,311.81	(23,102.30)	(2,310.23)	818,644.77	820,955.00
P	4th qtr	23,981,376.76	39,881.80	3,988.18	1,410,914.85	1,406,926.67
		P 81,624,358.33	P 46,881.80	P 4,688.18	P 3,972,249.24	P3,967,561.06

Petitioner contends that the input VAT payments in 1998 were paid in the course of its trade or business. Further, the unapplied input VAT payments subject of this case had not been carried over to the succeeding first quarter of 1999. Accordingly, on April 18, 2000, petitioner filed a claim for refund with the Revenue District Office No. 47 (East-Makati) in the amount of P3,967,561.06 covering the period January 1 to December 31, 1998 (Exhibit L; Par.1(c), Stipulation of Facts). Petitioner's administrative claim for refund to date remains unresolved and is still under investigation by the BIR (Par. 1(d), Stipulation of Facts).

Respondent, by way of Special and Affirmative Defenses, states that:

(a) The alleged claim for refund is subject to investigation by the Bureau of Internal Revenue;

(b) Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed strictly against the claimant as they partake of the nature of exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications.

(c) Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(c) and 229 of the Tax Code as amended.

The parties proposed the following issues to be considered by this Court, to wit:

(1) Whether or not AMEX has excess input taxes in the amount of P3,967,561.06 for the period covering January 1, 1998 to December 31, 1998;

(2) Whether or not AMEX's excess input taxes are attributable to its purchases that are directly related to the performance of its business or service;

(3) Whether AMEX's excess input taxes were not carried-over to the next succeeding quarter, i.e., the first quarter of 1999;

(4) Whether or not VAT Ruling No. 080-89 (April 13, 1989) is applicable to the transactions involved in this petition so as to entitle AMEX to a refund of its excess 1998 input VAT payments as a zero-rated taxpayer;

(5) Assuming that VAT Ruling No. 080-89 is not applicable, whether or not AMEX, based on the services it renders and the matter by which it is compensated for such services as described in the petition and as would be

proven during the trial, nevertheless qualifies as a zero-rated VAT entity pursuant to Section 108(B)(2) of the National Internal Revenue Code; and

(6) Depending on the Court's resolution of issue (a), whether or not AMEX is consequently entitled to a refund of the VAT input taxes it paid for its domestic purchases of taxable goods and services for the period beginning January 1, 1998 to December 31, 1998, which purchases were directly related to the performance of AMEX's business/service.

For easy discussion, we will resolve first issues 4 and 5 which are legal in nature.

It is the argument of the respondent that VAT Ruling No. 080-89 which states that petitioner's service income is automatically zero-rated effective January 1, 1988 is no longer applicable to the transactions involved in this petition because said ruling was issued prior to the amendment introduced by Revenue Regulations No. 5-96. Therefore, petitioner is not entitled to a refund of its excess 1998 input VAT payments as a zero-rated taxpayer.

Revenue Regulations No. 5-96 dated February 20, 1996 was promulgated to implement Section 102 of the Tax Code, quoted in part below:

> "SECTION 4.102-2(b)(2) and 4.103-1(B)(c) of Revenue Regulations No. 7-95 are hereby amended to read as follows:
>
> > **Section 4.102-2(b)(2)** – "Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported, as well as services by a resident to a non-resident foreign client such as project studies, information services, engineering and architectural designs and other similar services,

> the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP." xxx

In relation thereto, Section 4.102-2(b) of Revenue Regulations No. 7-95 is being partly reproduced:

> "(b) Transaction subject to zero-rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;
>
> (2) Services other than those mentioned in the preceding subparagraph, e.g., those rendered by hotels and other service establishments, the consideration for which is paid for in accordance with foreign currency and accounted for in accordance with the rules and regulations of the BSP; xxx

In interpreting the amendment laid down by Revenue Regulations No. 5-96, respondent issued VAT Ruling No. 040-98 dated November 23, 1998, providing, among others that:

> "The sales of services subject to zero percent (0%) VAT under Section 108(B)(2) of the Tax Code of 1997, are limited to such sales which are destined for consumption outside of the Philippines in that such rating also extends to project studies, information services, engineering and architectural designs and other similar services sold by a resident of

> the Philippines to a non-resident foreign client because these services are likewise destined to be consumed abroad. xxx
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> xxx xxx xxx
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> Accordingly, the onus of taxation under our VAT system is in the country where the goods, property or services are destined and consumed. This is the reason why under our VAT Law, goods, property or services destined to be consumed in the Philippines are subject to the 10% VAT whereas exports are zero-rated. (Sections 105 and 108, Tax Code of 1997)."

Considerably, respondent posits that since the services rendered by the petitioner consist of facilitating collection of AMEX Hongkong receivables from card members situated in the Philippines and payment to service establishments in the Philippines, such services, although rendered to a non-resident foreign client, are nevertheless performed in the Philippines and are not destined to be consumed abroad. Hence, the onus of taxation of the revenue arising therefrom, for VAT purposes, is also within the Philippines.

Respondent further argues that besides the fact that petitioner's services are not destined to be consumed abroad, they are neither of the same class nor of the same nature as "project studies, information services, engineering and architectural designs and other similar services", mentioned in Section 4.102-(b)(2) of Revenue Regulations No. 5-96, which are destined to be consumed abroad. As such, they cannot legally qualify for zero-rated VAT but rather are subject to the regular VAT rate of 10%.

Petitioner, on the other hand, counters that VAT Ruling No. 040-98 detracts from the clear and unequivocal language of Section 108(b)(2) [formerly Section 102.(b)(2)] of the Tax Code which provides:

> "(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippine by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> "(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> "(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)."

We agree.

Indeed, respondent in VAT Ruling No. 040-98, while purportedly interpreting Section 4.102-2(b)(2) of Revenue Regulations No. 5-96, cannot contravene the terms of the statute itself, the language of which is clear and unequivocal.

A tabular presentation of the requirements under Section 108(B)(2) of the Tax Code, under Section 4.102-2(b)(2) of Revenue Regulations No. 5-96, and under VAT Ruling No. 040-98 graphically shows the discrepancy mentioned:

Section 108(B)(2) of the Tax Code	Section 4.102-2(b)(2) of Revenue Regulations No. 5-96	Interpretation of the petitioner in VAT Ruling No. 040-98
Services other than those Mentioned in the preceding	Services other than processing, manufacturing or repacking for	"The sales of services subject to zero percent (0%) VAT under

paragraph, the consideration for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).	other persons doing business outside the Philippines for goods which are subsequently exported, as well as services by a resident to a non-resident foreign client, such as project studies, information services, engineering and architectural designs and other similar services, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.	Section 108(b)(2), of the Tax Code of 1997, are limited to such sales which are destined for consumption outside of the Philippines in that such services are tacked-in as part of cost of goods exported. The zero-rating also extends to project studies, information services, engineering and architectural designs and other similar services sold by a resident of the Philippines to a non-resident foreign client which services are likewise destined to be consumed abroad and are not rendered within the Philippines.

Note that while Section 108(B)(2) of the Tax Code only requires payment of the services in acceptable foreign currency, accounted for in accordance with existing BSP regulations, VAT Ruling No. 040-98 requires that the services be "destined for consumption abroad" and "not rendered within the Philippines". In fact, said VAT ruling appears to digress even from the very revenue regulations which it purports to interpret. Section 4.102-2(b)(2) of Revenue Regulations No. 5-96 does not require that the services to be rendered by a VAT registered person be destined, consumed or rendered abroad.

In sum, it is very clear that VAT Ruling No. 040-98 not only expands the language of Section (108)(B)(2) but also of Revenue Regulations No. 5-96 which interprets the said statute. The same cannot be countenanced. It is a settled rule of legal hermeneutics that the implementing rules and regulations cannot amend the act of Congress (**National Tobacco Administration vs. COA**, 311 SCRA 755) for administrative rules and regulations are intended to carry out, not supplant or modify, the law. (**Grego vs. COMELEC**, 274, SCRA 481). Likewise, it is axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulations is to be valid (**Lina, Jr. vs. Carino**, 221 SCRA 515). And in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails (**Hijo Plantation, Inc. vs. Central Bank**, 164 SCRA 192; **Conte vs. Court of Appeals**, 264 SCRA 19).

In other words, even assuming that VAT Ruling No. 080-89 is no longer applicable, petitioner still qualifies as a zero-rated VAT entity pursuant to Section 108(B)(2) of the Tax Code, as amended. As we held in the recent case of **American Express International, Inc. – Philippine Branch vs. Commissioner of Internal Revenue** (CTA Case No. 5813, January 2, 2001):

> "The provisions of Section 108(B)(2) of the Tax Reform Act of 1997 and Section 4.102-2(b)(2) are to clear to admit of interpretation advanced by Respondent. The former merely provides that services other than those enumerated in the preceding paragraph shall be subject to zero percent (10%) rate for as long as the consideration is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas."

Having dispensed with the legal issues, we now delve on the factual issues which are interrelated and can be summarized into whether or not petitioner is entitled to a refund of P3,967,561.06 allegedly representing unutilized input VAT payments on domestic purchases of taxable goods/services which are directly attributable to zero-rated sales for the period January 1 to December 31, 1998.

After a thorough deliberation of the applicable laws, rules, regulations and jurisprudence, arguments of the parties and evidence on record, we rule in favor of the Petitioner.

The governing law in the case at bar is Section 112(A)[then Section 106(a)] in relation to Section 108(B)(2) of the Tax Code, as amended, which we quote for easy reference:

> "***SEC. 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)."

In conformity with the above law, to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4) that the input VAT payments were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

As regards the first requirement, we already held that petitioner's sales of services qualify as zero-rated sales. It is a VAT registered entity (Exhibit A) and its sales of services to AMEX Hongkong falls under Section 108(B)(2) of the Tax Code. Further, petitioner's service fee earnings amounting to P81,624,358.33 (Exhibit S-1) were paid for in acceptable foreign currency (US dollars) and accounted for in accordance with the rules and regulations of the BSP as evidenced by the various telex advices and demand deposit statements (Exhibits S-2 to S-104, inclusive) and certification from BPI Forex Corporation (Exhibit T).

To prove compliance with the second requisite, petitioner submitted various suppliers' invoices and official receipts (Exhibits R-32 to R-2324, inclusive) which are valid documents in accordance with Sections 113 and 237 of the Tax Code. From said documents, petitioner established that it paid an input VAT in the sum of P3,972,025.15 (Exhibit R) on its domestic purchases of taxable goods/services for the year 1998.

Proceeding to the third requisite, we found that not all of the substantiated input VAT payments of P3,972,025.15 were directly attributable to petitioner's zero-rated sales. For the year 1998, petitioner had taxable sales in the amount of P46,881.80 with the corresponding output VAT of P4,688.18 (Exhibits M to P, inclusive). Indubitably, only the input VAT of P3,967,336.97, arrived at by deducting the output VAT of P4,688.18 from the substantiated input VAT of P3,972,025.15, can be directly attributed to petitioner's zero-rated sales for the subject period.

To meet the fourth requirement, petitioner offered in evidence its quarterly VAT return for the first quarter of 1999 (Exhibit K) to prove that the subject claim was not applied or carried over to the said quarter.

Finally, petitioner complied with the last requirement. Counting the two-year prescriptive period from the date of filing of petitioner's 1998 first quarterly VAT returns on April 20, 1998 (Exhibit C), both the administrative (filed on April 18, 2000) and judicial (filed on April 19, 2000) claims for refund were filed within the two-year period as mandated by law.

IN VIEW OF ALL THE FOREGOING, petitioner's claim for refund is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** to petitioner the sum of P3,967,336.97 representing unutilized input VAT payments for the period January 1 to December 31, 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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