REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AXSYS (PHILIPPINES), INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5596

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 30 2000

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DECISION

Before Us for consideration is a Petition for Review filed on March 31, 1998 wherein Petitioner is seeking for the refund of the original sum of NINE HUNDRED FIFTY ONE THOUSAND NINE HUNDRED FIFTY PESOS and 44/100 (P951,950.44) representing VAT input taxes allegedly attributable to its zero-rated export receipts covering the period from January 1, 1996 to December 31, 1996.

The antecedent facts giving rise to the controversy at bar are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines and is primarily engaged in the business of research and development of computer systems, sale and licensing of computer software, furnishing of support services including programming, system analysis, software installation, supply and maintenance of hardware, consulting and educational services, systems integration, software and data processing related services.

It is registered as a Value Added Tax entity and was issued VAT Registration Certificate No. 320-002-539-198V effective March 20, 1995 (Exh. C).

Records show that for the period January 1, 1996 to December 31, 1996, Petitioner generated a revenue of P47,515,187.62 for the exported services it rendered to its parent company based in the United Kingdom. According to Petitioner, this sale of services, specifically computer software development, are subject to Value Added Tax at zero-rate (0%) provided for under Section 102(b)(2) [now Section 108(B)(2)] of the 1997 Tax Code, considering that its sales are paid for in acceptable foreign currency which are inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

On October 2, 1997, Petitioner simultaneously filed its Quarterly VAT returns for the 1st, 2nd, 3rd and 4th quarters of 1996 (see BIR records, pp. 22, 30, 38 and 46). On August 10, 1998, it again filed an amended Quarterly VAT return (see Exhs. O, P, Q and R) which shows a total amount of P951,950.44 on the VAT input taxes it paid for the domestic purchases of taxable goods and services, broken down as follows:

1996	VAT Input Tax	Exhs.
1st Quarter	P219,964.49	O-1
2nd Quarter	238,126.64	P-1
3rd Quarter	149,987.37	Q-1
4th Quarter	343,871.94	R-1
T O T A L S	P451,950.44	

Petitioner further claimed that the VAT input taxes are directly attributable to the company's zero-rated export receipts and has not been applied to any VAT output tax liability of the company.

On November 14, 1997, Petitioner filed with Respondent's Revenue District Officer (RDO) No. 49, a claim for refund or tax credit of VAT input taxes paid on its domestic purchases of taxable goods and services amounting to P951,950.44 (Exh. LL).

Respondent failed to act immediately upon said claim. In order to protect its right, Petitioner elevated the matter before this Court by way of Petition for Review on March 31, 1998. In Answer thereof, Respondent raised the following Special and Affirmative Defenses, to wit:

> "(5) The Petition states no cause of action considering that it does not allege the dates when the taxes sought to be refunded were actually paid (Manufacturer's Bank and Trust Co. as trustee of General Trust Plan vs. CIR, CTA Case No. 1953, November 29, 1965);
>
> (6) Petitioner's claim for refund of alleged excess VAT input taxes is still under investigation by Respondent's bureau;
>
> (7) Petitioner failed to show compliance with the provisions of Section 16(c)(3) of Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 which provides as follows:
>
>> "Section 16. Refunds or Tax Credits on Input Tax. - x x x
>>
>> (c) Claims for tax credit/refund. - Application for tax credit/refund of value added tax paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the City or Municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>>
>> A photocopy of the purchase invoices or receipt evidencing the value-added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund.
>>
>> In addition, the following documents shall be attached whenever applicable.
>>
>> x x x x x x x x x

(3) Effectively zero-rated sale of goods and services.

(i) Photocopy of approved application for zero rate if filing for the first time.

(ii) Sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration and description of goods or services."

8. The input taxes allegedly paid on its local purchases are not supported by invoices pursuant to Section 108 of the Tax Code;

9. 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, 1970), (Manila Electric Company vs. Commissioner of Internal Revenue, 67 SCRA 35, 1979);

10. One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. (Asiatic Petroleum vs. Llanes, 49 Phil. 466-477, Union Garment Co., Inc. vs. Court of Tax Appeals, 4 SCRA 304, 1962) (Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, 20 SCRA 1056, 1967) which is not so in this case.

11. All told, the petition does not state a cause of action.

Petitioner, on the other hand, submitted the following documents to substantiate its claim for refund:

1. Petitioner's monthly VAT declaration for the year 1996 (Exhibits G, H, I, J, K, L, M, N).

2. Petitioner's amended quarterly VAT returns (BIR Form 2550) for 1^{st}, 2^{nd}, 3^{rd} and 4^{th} quarters of 1996 and 1997 (Exhibits O, P, Q, R, GG, HH, II, JJ).

3. Petitioner's amended monthly VAT declaration for the year 1996 (Exhibits S, T, U, V, W, X, Y, Z).

4. Petitioner's quarterly VAT returns (BIR Form 2550) for the 1^{st}, 2^{nd}, 3^{rd} and 4^{th} quarters of 1997 (Exhibits CC, DD, EE, FF).

5. Petitioner's written claim for refund of excess input taxes (Exh. LL).

6. Petitioner's application for tax credit/refund of VAT paid (Exh. MM).

7. BIR Certification (Form No. 1954) and VAT Registration Certificate (Exh. NN and OO).

8. Photocopies of the numerous supplier's sales invoices and/or official receipts for domestic purchases (Exh. TT).

9. Input VAT Certifications and Exhibits proving the amount of Input VAT paid (Exh. UU).

10. Certification issued by DOF showing that petitioner did not file claim for tax credit to the DOF (Exh. W).

11. Invoice No. 0004 to show that petitioner made a zero-rated sale of services to Axsys Ltd. (Exh. AA).

12. Certification issued by Standard Chartered Bank to prove that payments made by AXSYS Ltd. were made in US Dollar inwardly remitted (Exh. BB).

Petitioner advances the proposition as reason of the Petition for Review that the services it rendered to its parent company in the United Kingdom (AXSYS, LTD.) are subject to 0% rate pursuant to Section 102(B)(2) [now Section 108(B)(2)] of the Tax Code, considering that what was paid for in connection with said service is an acceptable foreign currency inwardly remitted to the Philippines and is accounted for in accordance with the rules and regulations of the BSP. Hence, Petitioner claims that it is entitled to the refund of the input taxes it paid during the taxable year 1996.

Considering the foregoing allegations of the Petitioner, the main issue needing ventilation in the case at bar is WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF THE EXCESS VAT INPUT TAXES IT PAID AMOUNTING TO P951,950.44 FOR THE PERIOD JANUARY 1, 1996 TO DECEMBER 31, 1996.

For easy reference, We quote hereunder the legal bases used by Petitioner in its claim for refund, thus:

Section 102. ***Value Added Tax on Sale of Services and Use or Lease of Properties.*** –

(A) 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) Processing, manufacturing or re-packing 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).

Section 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.

The aforequoted provisions of the Tax Code grant a privilege to a VAT-registered person whose sales or importations are zero-rated, to apply for the issuance of a tax credit certificate of its excess input tax payments. We could then adduce from the said provisions the basic requirements which must be satisfied in order for refunds or tax credits of input tax may be granted, to wit:

1. That there be a sale of goods and services;
2. That the sale was made by a VAT-registered person;
3. That the application of a tax credit or refund be made within two (2) years from the filing of the VAT quarterly returns; (CTA Resolution, Atlas Consolidated Mining and Development Corporation vs. CIR, CTA Case No. 5296, July 20, 1998);
4. That the sale was paid for in acceptable foreign currency proceeds inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the BSP; and
5. That the input taxes have not been applied against output taxes.

It appears quite evident in the case at bar that there was sufficient compliance with the aforementioned requirements.

First, there was a sale of services rendered by Petitioner to its parent company (Axsys, Ltd.) abroad. Records show that Petitioner is engaged in the export sales of computer services and computer software development (see TSN, pp. 26-27, October 19, 1998; Petitioner's Memorandum, p. 165, CTA docket). For these services, it billed Axsys, Ltd. the total amount of P47,516,187.62 representing the product development cost for the year 1996 as evidenced by invoice no. 0004 (Exh. AA).

Second, said sale of services was made by Petitioner who is a VAT-registered entity with a VAT registration certificate no. 320-002-539-198 issued by Revenue District Office No. 32, East Makati effective July 26, 1993 (Exhs. OO to OO-2).

Third, Petitioner's claim for refund was filed within the two-year prescriptive period as provided under Section 230 in relation to Section 106(a) and (b) and Sections 110 of the Tax Code. As the reckoning date from which the two-year prescriptive period is to be counted appears to be ambiguous, this Court has already settled said matter in a resolution it promulgated on July 20, 1998 in the case entitled *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296* where We ruled that the two-year period of the claims for VAT refund should be counted from the date of filing of the VAT return, thus:

> "Anent the first issue, this Court, after a careful study of the arguments adduced by petitioner, reconsidered the decision with regard to the issue of prescription and consequently agrees with the interpretation of petitioner that the two-year period should be counted from the date of filing of the corresponding VAT quarterly return which is within twenty (20) days after the close of each taxable quarter. This will harmonize Section 106 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the cases of *Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Appeals, G.R. No. 83736 dated January 15, 1992 and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957*, that the two (2) year period should be counted from the filing of the final income tax return, because it is only during that date that the exact liability or refundability of tax can be determined. **In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of the VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore to conclude that the two-year period should not immediately be counted from the close of the quarter but from the date of the filing of the VAT return**."

Thus, in view of the pronouncement laid down by this Court in the aforementioned resolution (Atlas Consolidated Mining and Development Corporation vs. CIR, CTA Case No. 5296), wherein it harmonized Section 106 with Section 230 of the Tax Code in which the two-year period is counted from the filing of the final income tax return, we deem it proper to apply, by analogy, the said dictum in the case at bar.

Prescinding from the said ruling, the two-year period prescribed under Section 106(d) of the New VAT Law (RA 7716) should be read correlatively with Section 230 in so far as the reckoning date of the 2-year prescriptive period in claims for refund is concerned. It is only from the moment when the taxpayer filed its quarterly VAT return can we determine if Petitioner is indeed entitled to the refund sought for. Thus, the reckoning date of the two-year prescriptive period should be counted from the time when the taxpayer actually filed its VAT return.

In the case at bar, Petitioner belatedly filed its VAT return with the BIR. Records would reveal that for the taxable year 1996, Petitioner filed its original and amended return on October 2, 1997 and August 10, 1998, respectively. This is beyond the 20-day period mandated by law in filing VAT returns.(Section 4.110-1(A) of Revenue Regulations No. 7-95, implementing the new VAT law or RA 7716). Consequently, by reason of the late filing of the quarterly VAT returns, Petitioner paid one thousand pesos(P1,000) per return belatedly filed as the penalty imposed by the BIR on late filing.

A look into the reckoning date of the 2-year prescriptive period which is counted from the time of actual filing of the VAT return up to the time of filing of the judicial claim before this Court, would demonstrate that the subject claim of this instant petition is filed well in time.

Undisputedly, where there are two dates of filing, the date of the filing of the original return is often times considered as the reckoning date. As Petitioner filed its administrative claim for refund on November 14, 1997 (Exh. LL) and the instant Petition for Review on March 31, 1998, clearly, said claims were timely filed since the two-year prescriptive period commenced to run only on October 2, 1997, the date when the original quarterly VAT returns for 1996 were filed. Thus:

				Date claim for refund filed		
Qtr. Involved	Supposed to be date of filing	Late filing w/ BIR Original	Amended	BIR	CTA	Status
1st Quarter Jan. to Mar. 1996	Apr. 20, 1996	Oct. 2, 1997	Aug. 10, 1997	Nov. 14, 1997	Mar. 31, 1998	Not Prescribed
2nd Quarter Apr. to June 1996	July 20, 1998	Oct. 2, 1997	Aug.. 10, 1997	Nov. 14, 1997	Mar. 31, 1998	Not Prescribed
3rd Quarter July to Sept. 1996	Oct. 20, 1998	Oct. 2, 1997	Aug.. 10, 1997	Nov. 14, 1997	Mar. 31, 1998	Not Prescribed
4th Quarter Oct. to Dec. 1996	Jan. 20, 1997	Oct. 2, 1997	Aug.. 10, 1997	Nov. 14, 1997	Mar. 31, 1998	Not Prescribed

Fourth, Petitioner has clearly established through testimonial and documentary evidence that its sales of services to its parent company were paid for in US dollars which were inwardly remitted to the Philippines in accordance with the existing regulations of the Bangko Sentral ng Pilipinas. This was testified to by Petitioner's witness, thus:

"Q. Mr. Witness, in what currency is the sales of AXSYS paid for?

A. We generated in US dollar currency.

Q. Is this amount inwardly remitted to the Philippines?

A. This was inwardly remitted through Standard Chartered Bank, Ayala Branch.

Q. Do you have any document that will show that you have generated such zero-rated revenue and said amount was in fact inwardly remitted to the Philippines?

A. Yes, We have. This is the Standard Chartered Bank's Certification of Inward Remittance.

Q. Are there any other document that will show that you do have a zero-rated sales?

A. Yes, it is also included in the sales invoice."

(TSN, pp. 29-30, October 19, 1998)

True enough, said inward remittances amounting to $10,332,212.14 were evidenced by a certification issued by the Standard Chartered Bank (Exh. BB) dated November 21, 1997 which shows that the payments made by AXSYS, Ltd. to the Petitioner were inwardly remitted to the Philippines in United States Dollars. Evidently therefore, the sales of services performed abroad is subject to 0% rate pursuant to Section 102(b)(2) of R.A. 7716.

Lastly, Petitioner was able to prove that it had not applied its VAT input taxes to any tax liabilities for the succeeding period. Contrary to Respondent's argument that the 1996 input taxes were carried over in 1997, Petitioner did not carry forward the input tax credits of taxable year 1996 as shown by the amended 1st quarter VAT return of 1997 (Exh. GG).

Having established the legal right of the Petitioner to the refund, We will now proceed to examine if said claim is substantiated by documentary evidence.

A careful perusal of the documents submitted by Petitioner would reveal that its domestic purchases for the period January 1, 1996 to December 31, 1996 are supported by numerous suppliers' sales invoices and/or official receipts (Exh. TT, TT-1 to TT-697). Pursuant to CTA Circular No. 1-95, as amended, Petitioner engaged the services of an independent auditing firm to check and verify these voluminous documents. Thus, in its report dated September 30, 1998, (Exh. VV), said independent auditor certified that out of the total creditable input tax claimed by Petitioner in the amount of P951,950.44, only the amount of P907,290.26 were validly supported by documents. In an effort to remain consistent with the Independent CPA's findings, Petitioner reduced its judicial claim for refund in its memorandum in the amount of P907,290.26.

Considering said discrepancy, this Court conducted its own examination of the documents presented and came up with an additional amount of P39,890.84 that should be disallowed. Verification of each of the invoices and receipts would show some inherent defects that cause the disallowance of the amount claimed.

The input VAT amounting to P4,804.54 which is allegedly issued to Microphase and Compumedics is not supported by any document and thus we doubt its truthfulness and existence. Other invoices and official receipts were not given credence by this Court since it does not contain the TIN and appears to be non-VAT invoices which is clearly not in accordance with the requirement specified in Revenue Memorandum Circular No. 63-91, thus:

> Section 5(3)(b). All receipts/invoices to be printed subsequently shall contain the TIN, with the letters "V" (for VAT registered) or "NV" (for non-vat registered) placed after the last digit of the TIN. This shall facilitate the determination of whether the taxpayer is VAT registered or not.

Since the receipts involved were issued after 1991, it is imperative that the above quoted circular be complied with (see BIR Ruling UN-323-9-6-95) as its absence is detrimental to the claim for refund **(Benguet Corporation vs. CIR, CTA Case No. 5532, October 12, 1999).**

Other disallowed input VAT are detailed as follows with their corresponding reasons for disallowance:

AXSYS PHILIPPINES, INC.
Schedule of disallowed input vat
For the period January to December 1996

	SUPPLIER	DATE	EXHIBIT	REFERENCE NO.		INVOICE AMOUNT		INPUT VAT
(a)	**No supporting document**							
	MICROPHASE	Sep-96			P	50,800.00	P	4,618.18
	COMPUMEDICS	Nov-96				2,050.00		186.36
			Subtotal		**P**	**52,850.00**	**P**	**4,804.54**
(b)	**Invoice/Official receipt without TIN**							
	CROWN TRAVEL CORPORATION	Sep-96	TT-484	23915	**P**	**39,343.00**	**P**	**3,576.64**
(c)	**Receipts without validation**							
	PLDT	Aug-96	TT-430	13262	P	1,014.64	P	92.24
	GLOBE TELECOM	Sep-96	TT-474	22		7,347.05		667.91
			Subtotal		**P**	**8,361.69**	**P**	**760.15**
(d)	**Non-vat invoices/official receipts**							
	PHILCOM	Jan-96	TT-29	466520	P	39,296.66	P	3,572.42
	PLDT	Feb-96	TT-84	2860352		918.90		83.54
			TT-83	2860351		1,217.89		110.72
			TT-85	2860350		1,022.90		92.99
			TT-87	2860349		1,044.20		94.93

		TT-86	2860345		2,504.00		227.64
		TT-88	2860347		981.45		89.22
		TT-89	2860346		990.75		90.07
		TT-90	2860344		1,209.25		109.93
		TT-91	3440334		8,673.15		788.47
		TT-92	3440333		12,643.11		1,149.37
		TT-93	3440 41		1,281.31		116.48
		TT-94	3440346		562.85		51.17
		TT-95	3440342		562.85		51.17
		TT-96	3408691		11,557.22		1,050.66
		TT-97	3408690		19,186.94		1,744.27
		TT-98	3440335		27,445.79		2,495.07
PLDT	Mar-96	TT-162	6108968		13,196.45		1,199.68
		TT-163	6139966		562.85		51.17
		TT-164	6139968		562.85		51.17
		TT-165	6139967		562.85		51.17
		TT-152	6780860		2,504.00		227.64
		TT-153	6780866		917.40		83.40
		TT-154	6780865		976.10		88.74
		TT-155	6780889		951.90		86.54
		TT-156	6779866		1,037.40		94.31
		TT-157	6780862		934.90		84.99
		TT-158	6780861		957.25		87.02
		TT-159	6780859		1,134.50		103.14
PHILCOM	Apr-96	TT-176	470385		37,029.59		3,366.33
SPRINTER'S MKTG	Apr-96	TT-233/234	0047		3,360.00		305.45
MACHEY PHILS. ENTERPRISES	Oct-96	TT-570-572	0049/0050		10,200.00		927.27
		TT-608	0065		5,100.00		463.64
MACHEY PHILS. ENTERPRISES	Dec-96	TT-673/674	0110		1,520.00		138.18
		Subtotal		**P**	**212,607.26**	**P**	**19,327.96**
(e) Supported by provisional receipts only							
PHIL-DATA BUSINESS SYSTEMS	Aug-96	Not pre-marked		P	5,445.00	P	495.00
CROWN TRAVEL CORPORATION	Nov-96	TT-645			120,192.00		10,926.55
		Subtotal		**P**	**125,637.00**	**P**	**11,421.55**
		Total		**P**	**438,798.95**	**P**	**39,890.84**

Based on the above findings, We are inclined only to grant Petitioner's claim for refund of allowable input VAT tax credit in the reduced amount of P867,399.42 computed as follows:

Original Amount of Claim		P951,950.44
Less: Disallowances		
(a) Per Punongbayan and Araullo's verification (Exh. UU)	P44,660.18	
(b) Per Court's Verification	39,890.84	84,551.02
Amount Refundable		P867,399.42

WHEREFORE, in the light of the foregoing, the instant Petition for Review is hereby **GRANTED** and Respondent is **ORDERED** to **REFUND** or to **ISSUE** a tax credit certificate in the reduced amount of P867,399.42 representing the excess input VAT payments for the calendar year ended December 31, 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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