REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

C.T.A. CASE NO. 6548

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 14 2006 *[signature]*

x -x

DECISION

BAUTISTA, L., J.:

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P3,970,070.43 allegedly representing petitioner's unutilized input value-added tax attributable to zero-rated sales of goods and services for the third quarter of 2000.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with office address at the 9th Floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City while respondent is the duly constituted official authorized, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at the 5th Floor, BIR National Office Building, Diliman, Quezon City (*pars. 1 & 2, Admitted Facts*).

Petitioner was organized to principally engage in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description; and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in a representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial. It is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer (*pars. 3 & 4, Admitted Facts*).

For the third quarter of 2000, petitioner filed with the BIR its VAT return on October 25, 2000 *(Exhibit C)*. However, on September 17, 2002, petitioner filed an amended return for the third quarter of 2000 *(Exhibit D)* which reflected the following:

			Input VAT on Domestic Purchases of				
Taxable Sales	Output VAT	Zero-rated Sales/Receipts	Capital Goods	Goods other than Capital Goods	Services	Total Available Input VAT	Net Creditable Input VAT
1,801,437.12	180,143.69	81,001,845.95	7,131.82	4,017,383.03	137,580.13	4,162,094.98	3,981,951.29

On September 30, 2002, petitioner through its external auditor, Sycip, Gorres, Velayo and Company, filed with the BIR an administrative claim for refund or issuance of a tax credit certificate in the amount of P3,970,070.43 allegedly representing unutilized input VAT credits attributable to its zero-rated sales for the 3rd quarter of 2000 (*Exhibit F*).

Due to respondent's inaction on its claim, petitioner elevated its case before this Court on October 15, 2002.

The parties, in their Joint Stipulation of Facts and Issues, submitted the following issues for this Court's resolution:

1. Whether or not petitioner's sales of goods and services are zero-rated for VAT purposes under Section 106(A)(2)(a) and 108(B)(2) and (3) of the 1997 Tax Code;

2. Whether or not the amount of P3,970,070.43, out of the total excess input VAT of P4,162,094.98 represents input VAT paid on domestic purchases of taxable goods that are directly attributable to its zero-rated export sales of goods and services;

3. Whether or not petitioner incurred input VAT in the amount of P546,104.84, in connection with its purchases of capital goods and office supplies, as well as rentals for the use of real property, which are not directly attributable to either its export sales of goods or its taxable sale of goods and services;

4. Whether or not petitioner's input VAT which are not directly attributable to either its zero-rated or taxable sales should be allocated to either operation, with the amount of P534,223.98 to be credited to petitioner's zero-rated sales of goods and services;

5. Whether or not petitioner's excess input VAT for the third quarter of taxable year 2000 was applied or utilized against its output VAT in the succeeding taxable quarters;

6. Whether or not the excess input VAT arising from petitioner's purchases of goods and services for the period July 1, 2000 to September 30, 2000 attributable to its zero-rated sales, and other purchases of goods and services the input VAT of which are allocable to said zero-rated sales, are duly supported by pertinent documents, such as VAT invoices and receipts; and

7. Whether or not petitioner is entitled to the claim for refund in the amount of P3,970,070.43 representing unutilized and/or unapplied input VAT attributable to the excess of its accumulated input VAT payments over the output VAT due on domestic sales for the third quarter of taxable year 2000.

Anent the first issue, petitioner maintains that the bulk of its sales for the third quarter of 2000 are subject to zero percent VAT pursuant to Section 106(A)(2)(a)(1) and 108(B)(2) and (3) of the National Internal Revenue Code (NIRC) of 1997. These sales allegedly pertain to petitioner's export sales of goods as well as its sales of indenting and related services to non-resident entities, the consideration for which was paid for in acceptable foreign currency and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner likewise generated zero-rated sales of services to entities that are registered with the Philippine Economic Zone Authority.

In its amended VAT return for the third quarter of 2000, petitioner's declared zero-rated sales amounted to P81,001,845.95 (*Exhibit D*). As noted by the Court commissioned auditing firm, SGV & Co., in its addendum report dated July 29, 2004 (*page 6 of Exhibit G*), the amount of P81,001,845.95 treated by petitioner as zero-rated sales consisted of the following:

Nature of Zero-Rated Sales	Amount
Export Sales	P 37,019,462.39
Commission from PEZA-registered enterprises	597,997.25
Commission from non-residents	43,384,386.31
Total	**P 81,001,845.95**

A scrutiny of the report of SGV & Co. and petitioner's supporting documents such as VAT invoices, bills of lading, export declarations, supporting documents for inward remittances of export sales proceeds from Marubeni Corporation (Mutual Account Summary) *[Exhibits L-3-1 to L-3-14e; Exhibits L-6-1 to L-6-26a; pages 7 & 12 of Exhibit G]* shows that for the third quarter of 2000, petitioner had direct export sales to Marubeni Corporation of Tokyo, Japan and Ishida Ironworks Co., Ltd. of Nagoya, Japan, which were paid for in acceptable foreign currency or its equivalent in goods and services, and accounted for in accordance with the rules and regulations of the BSP. These direct export sales qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, which states:

> "**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** -
> "(A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
> "(a) *Export Sales.* – The term '*export sales*' means:
> "(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

However, out of the total amount of P37,019,462.39 direct export sales reported by petitioner, the amount of P680,432.72 did not have foreign currency remittances or supporting bills of lading/export declarations, to wit:

Without corresponding foreign currency remittances		
Amount per Invoice No. 635 (*Exhibit H-6-g*)	P 7,073,124.13	
Less: Foreign Remittances per Mutual Account (M/A) Summary	6,432,555.85	
Export sales without foreign currency remittances		P 640,568.28
Without bills of lading, export declarations and foreign currency remittances (*Exhibit H-6-e*)		39,864.44
TOTAL		P 680,432.72

Therefore, only the direct export sales amounting to P36,339,029.67 qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997.

As to the alleged zero-rating of petitioner's commission from PEZA registered companies in the amount of P597,997.25 and commission from non-residents in the amount of P43,384,386.31, petitioner relies on Section 108(B)(2) and (3) of the NIRC of 1997 which provides:

> **"SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties.-***
>
> xxx xxx xxx
>
> "(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;
>
> xxx xxx xxx
>
> "(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);
>
> "(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."

With respect to petitioner's sale of services to PEZA registered companies, petitioner likewise cites relevant portions of Revenue Memorandum Circular (RMC) No. 74-99, thus:

> "SECTION 3. **Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise.-**
>
> "(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> xxx xxx xxx
>
> (b) **Sale of Service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

xxx xxx xxx

(b) **Sale of Service**. – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5) , NIRC , in relation to Art. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered supplies from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.

"This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular."

Clearly, from the foregoing provisions of Section 108(B)(3) and as clarified under RMC No. 74-99, petitioner's sales of services to PEZA registered companies are subject to zero percent (0%) VAT. However, out of the reported sales of services of P597,997.25, only the amount of P190,472.47 which was duly supported by VAT official receipts, qualifies for VAT zero-rating.

Similarly, petitioner's sales of services to non-residents for the third quarter of 2000 which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP fall under the category of services subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997. Nevertheless, since petitioner's reported sales of services in the amount of P43,384,386.31 was not duly supported by VAT official receipts in accordance with Section 113 of the NIRC of 1997, the same shall not qualify for VAT zero-rating.

In fine, out of the total declared sales of P81,001,845.95 for the third quarter of 2000, only the amount of P36,529,502.14 qualifies for VAT zero-rating, detailed as follows:

Export Sales	P 36,339,029.67
Sales of Services	
Commission from PEZA registered companies	190,472.47
TOTAL	P 36,529,502.14

Considering that the above sales of P36,529,502.14 of petitioner for the third quarter of 2000 is subject to zero percent (0%) VAT, the input VAT attributable thereto maybe refunded or claimed as tax credit certificate in accordance with Section 112(A) of the NIRC of 1997, which reads:

> "**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: xxx"

Based on the foregoing, in order to be entitled to a refund/tax credit of unutilized input VAT, 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 during and in the succeeding quarters; and
5) that the claim for refund was filed within the two-year prescriptive period.

As earlier discussed, petitioner had zero-rated sales in the amount of P36,529,502.14 for the third quarter of 2000. Likewise, the claim for refund/tax credit both in the administrative and judicial levels filed on September 30, 2002 and October 15, 2002, respectively, was timely filed within the two-year prescriptive period counted from October 25, 2000, the date when petitioner originally filed its VAT return for the third quarter of 2000.

Regarding the second requisite, records show that out of the reported input taxes of P4,162,094.98, only the amount of P2,667,776.95 was duly supported by VAT invoices or official receipts in accordance with Section 113 of the NIRC of 1997 in relation to Section 4.108-1 of Revenue Regulations No. 7-95. The remaining input taxes of P1,494,318.03 should be disallowed for the following reasons:

	Per SGV & Co.		
	Initial Report	Addendum Report	Total
Input taxes for which the dates of the related VAT invoices or official receipts fall outside of the subject period of claim	434,397.60	873,814.90	1,308,212.50
Input taxes on purchases of goods without valid VAT invoices and input taxes on purchases of services without valid VAT official receipts	93,607.47	91,113.33	184,720.80
Input taxes without supporting documents			1,384.73
			1,494,318.03

As to the third requisite, petitioner's amended VAT return for the third quarter of 2000 shows that petitioner had an output VAT liability of P 180,143.69 which when deducted from the substantiated input taxes of P2,667,776.95 results to an excess input tax of P2,487,633.26. Allocating, therefore, the amount of P2,487,633.26 to the amounts of substantiated and total declared zero-rated sales of P36,529,502.14 and P81,001,845.95, only the input taxes of P1,121,851.03 can be attributed to the substantiated zero-rated sales of P36,529,502.14.

As to whether or not the claimed input taxes were carried over or applied against any output VAT liability in the succeeding quarters, petitioner presented its amended VAT return for the fourth quarter of 2000 (*Exhibit E*). The return shows that no amount of input tax carried-over from the previous quarter was indicated (*Exhibit E-3*). However, this Court finds the said document insufficient to prove that no amount of the claimed input taxes was applied against any output VAT liability of the succeeding quarters. It is to be noted that the amended VAT return for the fourth quarter of 2000 was filed on October 28, 2002. Prior to this date, petitioner as the law requires, should have already filed its VAT returns for the four taxable quarters of 2001 and first three quarters of 2002. These VAT returns should have been presented by petitioner in order to ascertain that the claimed input taxes were not actually applied in the said periods.

For petitioner's failure to sufficiently prove that no amount of the substantiated input taxes of P1,121,851.03 was applied against any output VAT liability in the succeeding quarters, the same cannot be granted.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DISMISSED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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
Chairperson, First Division
Presiding Justice