REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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UCPB PROPERTIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6467 and 6512

Members:

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

Promulgated:

JUN 18 2009;3:14pm

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DECISION

CASANOVA, *J.*:

Nature of the Case

The Petitions for Review seek for the issuance of tax credit certificate or refund of unutilized input VAT paid on purchases of capital goods in the aggregate amount of P16,901,035.90 for the first and second quarters of the taxable year 2000.

Statement of the Facts

Petitioner, UCPB Properties, Incorporated, is a domestic corporation duly organized and existing under and by virtue of Philippine Laws, with principal office at 8th Floor, UCPB Building, Makati Avenue, Makati City.[1] It is principally engaged in the business of home building and home development, real estate buying and selling,

[1] Paragraph 1, Stipulation of Facts, Page 1, Joint Stipulation of Facts and Issues (JSFI); Page 51, CTA Records

subdividing and developing lands and other properties.[2] Likewise, it is registered as a Value-Added Tax (VAT) Taxpayer with Tax Identification Number (TIN) 000-172-912-000 with Bureau of Internal Revenue (BIR) Certificate of Registration No. 15797.[3]

Whereas, respondent is the duly appointed Commissioner of Internal Revenue with authority to act as such including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.[4]

For the period from January 1, 2000 to March 31, 2000, petitioner filed its Quarterly VAT Return on April 25, 2000 which reflected an input tax of P14,572,315.34;[5] while for the period from April 1, 2000 to June 30, 2000, it filed its Quarterly VAT Return on July 24, 2000 reflecting input tax from domestic purchases in the amount of P10,866,698.00.[6]

Pursuant to Revenue Regulations No. 7-95, petitioner filed an administrative claim for refund or issuance of tax credit on April 24, 2002 and July 23, 2002 in the respective amounts of P9,573,975.01 and P7,327,060.89 covering the period from January 1, 2000 to June 30, 2000.[7]

In order to suspend the running of the two-year prescriptive period under the National Internal Revenue Code (NIRC) of 1997, as amended and Revenue Regulations No. 7-95 and to preserve its right to judicially claim the tax refund or tax

[2] Paragraph 3, Stipulation of Facts, Page 1, JSFI; Page 51, CTA Records
[3] Paragraph 4, Stipulation of Facts; Page 2, JSFI; Page 52, CTA Records
[4] Paragraph 2, Stipulation of Facts, Page 1, JSFI; Page 51, CTA Records
[5] Paragraph 5, Stipulation of Facts, Page 2, JSFI; Page 52, CTA Records
[6] Paragraph 6, Stipulation of Facts, Page 2, JSFI; Page 52, CTA Records
[7] Paragraph 7, Stipulated Facts, Page 2, JSFI; Page 52, CTA Records

credit, petitioner filed Petitions for Review covering the 1st and 2nd Quarters of taxable year 2000.[8]

Petitioner filed its first *Petition for Review*[9] on April 25, 2002 claiming for a refund or issuance of tax credit certificate covering the 1st Quarter of the taxable year 2000 in the amount of P9,573,975.01. In response to the Petition, respondent filed its *Answer*[10] on June 21, 2002 and interposed the following *Special and Affirmative Defenses*:[11]

> "3. The petition is being filed beyond the two-year period as provided for in Section 112(B) of the Tax Code, the year 2000 being a leap year;
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> 4. The Quarterly VAT Return for the 1st Quarter of year 2000 does not bear the name of the petitioner giving doubt if it is really petitioner's return;
>
> 5. Portion of the input taxes claimed are supported by receipts without the payee's VAT registration number, hence, not refundable;
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> 6. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;
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> 7. Petitioner failed to show that the alleged creditable VAT was not carried over and unutilized against the value-added tax liability of the petitioner in the succeeding quarter or year;
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> 8. Claims for refund construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
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> 9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund; and

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[8] Paragraph 9, JSFI; Page 52, CTA Records
[9] Pages 1-3, CTA Records; CTA Case No. 6467
[10] Pages 20-21, CTA Records; CTA Case No. 6467
[11] Paragraphs 3-10, Answer; Pages 20-21, CTA Records; CTA Case No. 6467

10. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable."

On July 23, 2002, petitioner filed its second *Petition for Review*[12] seeking for the refund or issuance of tax credit certificate of the amount of P7,327,060.89, this time covering the 2nd Quarter of the year 2000. Respondent filed its *Answer*[13] thereto on September 17, 2002 and introduced its *Special and Affirmative Defenses,*[14] *viz*:

"4. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

5. Petitioner failed to show that the alleged creditable was not carried over and utilized against the value-added tax liability of the petitioner in the succeeding quarter or year;

6. 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; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

7. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund; and

8. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable."

On September 24, 2002, petitioner filed a *Motion for Consolidation and Re-Setting of Pre-Trial*[15] praying for the consolidation of CTA Cases Nos. 6467 and 6512.

The Court, in a *Resolution*[16] dated October 2, 2002, resolved as follows:

"Confirming the order given in open court on September 27, 2002, petitioner's 'Motion for Consolidation and Re-Setting of Pre-

[12] Pages 1-3, CTA Records; CTA Case No. 6512
[13] Pages 28-29, CTA Records; CTA Case No. 6512
[14] Paragraphs 4-8, Answer; Pages 28-29, CTA Records; CTA Case No. 6512
[15] Pages 33-35, CTA Records; CTA Case No. 6467
[16] Page 37, CTA Records

> Trial filed on September 24, 2002 is hereby **GRANTED**, there being no opposition on the part of respondent. CTA Case Nos. 6467 & 6512 are hereby consolidated.
>
> **ACCORDINGLY**, let the consolidated cases be set for pre-trial on October 25, 2002 at 9:00 in the morning. The parties are instructed to file with the Court and serve on the adverse party their Consolidated Pre-Trial Briefs ensuring their receipt by the adverse party at least three (3) days before the date of pre-trial.
>
> **SO ORDERED.**"

The parties filed their *Joint Stipulation of Facts and Issues*[17] on November 11, 2002, which the Court approved in a *Resolution*[18] dated November 19, 2002.

Petitioner filed a *Motion for Leave of Court for the Adoption of Procedure under CTA Circular No. 1-95, as amended by CTA Circular No. 10-97*[19] on November 22, 2002, praying for the commissioning of Mr. Noel P. Rabaja as the Independent Certified Public Accountant (CPA), which the Court granted in a *Resolution*[20] dated November 26, 2002.

On September 19, 2003, petitioner filed another *Motion to Avail of the Provisions of CTA Circular No. 1-95, as amended*,[21] praying for the services of Atty. Perfecto E. Mirador, Jr. as its Independent CPA instead after being reminded by the Court that the CPA must not, in any way, be related to the petitioner, directly or indirectly[22]; hence, on September 24, 2003, the Court granted the same and commissioned Atty. Perfecto E. Mirador, Jr.

On November 27, 2003, the Independent CPA filed its *Report*[23], with the following conclusion:

[17] Pages 51-53, CTA Records
[18] Page 57, CTA Records
[19] Pages 59-61, CTA Records
[20] Page 62, CTA Records
[21] Pages 79-81, CTA Records
[22] Transcript of Stenographic Notes (TSN), June 9, 2003, pages 21-23, CTA Records
[23] Pages 95-103, CTA Records

> "In performing the above procedures, except for the effects of the items noted above as shown in **Annex 'B'**, no other matters came to our attention that cause us to believe that the attached Schedule of Input VAT paid should be adjusted. Based on this report, we believe that only the amount of **P16,894,399.27** is a valid claim for VAT credit/refund. This is net of the **P6,636.63** which is due to erroneous computation."

On February 9, 2004, counsel for petitioner manifested that it is resting its case and requested for thirty (30) days therefrom to file its Formal Offer of Evidence.[24] Following an *Urgent Motion to Set Commissioner's Hearing to Substitute Exhibit "T"*[25] filed on February 11, 2004, and a *Motion for Extension of Time to File Formal Offer of Evidence*[26] filed on March 9, 2004, petitioner filed an *Urgent Motion to Defer Filing of Formal Offer of Evidence and Motion to Present Additional Evidence*[27] on March 30, 2004. The Court granted the same on April 23, 2004.[28]

After petitioner's presentation of additional evidence, the Independent CPA filed its *Amended Final Partial Report*[29] on July 5, 2005, an *Amended Final Report*[30] on September 2, 2005, and *Amended Final Report*[31] on November 8, 2005.

Petitioner filed its *Formal Offer of Evidence*[32] on July 12, 2006, offering Exhibits *"A"* to *"NNN"* inclusive of sub-markings. Through *Resolutions* dated October 23, 2006[33] and February 23, 2007[34], the Court ultimately admitted petitioner's exhibits except for Exhibit *"III-1"* for failure to present its original for comparison.

On April 27, 2007, the Court confirmed the order in open court on April 12, 2007 when it resolved that respondent was deemed to have waived its right to

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[24] Page 106, CTA Records
[25] Pages 107-108, CTA Records
[26] Pages 111-112, CTA Records
[27] Pages 114-116, CTA Records
[28] Page 117, CTA Records
[29] Pages 149-211, CTA Records
[30] Pages 216-278, CTA Records
[31] Pages 280-352, CTA Records
[32] Pages 469-519, CTA Records
[33] Pages 537-539, CTA Records
[34] Pages 569-570, CTA Records

present evidence for failure of respondent's counsel to appear on the said date for respondent's presentation of evidence.[35]

Petitioner filed its *Memorandum (For the Petitioner)*[36] on June 12, 2007. Hence, in a *Resolution*[37] dated June 15, 2007, the Court submitted the case for decision taking into consideration the *Memorandum* filed by the petitioner, *sans* the *Memorandum* of the respondent.

However, on October 17, 2007, petitioner filed an *Urgent Motion (1) Leave of Court to Present Additional Evidence; and (2) To Defer Resolution of the Case*[38] based on the recent Decision of the Court in *CTA Cases Nos. 6677 & 6723*, entitled *"UCPB Properties, Inc. vs. Commissioner of Internal Revenue".* In these two cases, petitioner's claim for refund therein of unutilized input VAT for the year 2001 was denied due to its failure to show documentary proof that Forbes Tower was a capital property since it was used for its leasing business; since the same Forbes Tower is involved in the instant Petition, petitioner deemed it proper to present additional evidence to prove that the building was actually leased and thereby establish its entitlement for refund of unutilized input VAT arising from the construction of Forbes Tower[39]. The Court granted petitioner's motion in a *Resolution*[40] dated June 3, 2008.

After presentation of further evidence, petitioner filed its *Supplemental Formal Offer of Evidence*[41] on June 5, 2008, without respondent's Comment thereto. The formal offer was resolved in a *Resolution*[42] dated July 24, 2008.

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[35] Pages 574-575, CTA Records
[36] Pages 580-634, CTA Records
[37] Page 637, CTA Records
[38] Pages 638-647, CTA Records
[39] Page 649, CTA Records
[40] Pages 700-701, CTA Records
[41] Pages 704-714, CTA Records
[42] Pages 715-716, CTA Records

In a *Resolution*[43] dated October 7, 2008, the case was submitted for decision taking into consideration petitioner's *Memorandum* filed on June 12, 2007 and the *Supplemental Memorandum*[44] filed on August 27, 2008, *sans* respondent's Memorandum.

Issues

The parties' stipulated issues:

I. Whether or not petitioner has unutilized VAT input taxes in the amounts of P9,573,975.01 and P7,327,060.89 for the 1st and 2nd Quarters of 2000, respectively, arising from its purchases of capital goods, which are proper objects of a claim for refund pursuant to Section 112 (B) of the Tax Code, as amended;

II. Whether or not the unutilized VAT input taxes in the amounts of P9,573,975.01 and P7,327,060.89 generated from petitioner's purchases of capital goods during the 1st and 2nd Quarters of 2000, respectively, are properly substantiated by documentary evidence in the form of invoices and official receipts;

III. Whether or not the amount of P9,573,975.01 and P7,327,060.89 representing unutilized VAT input taxes generated from petitioner's purchases of capital goods during the 1st and 2nd Quarters of 2000, respectively, remained unapplied against any output tax liability of the petitioner in the subsequent taxable quarters; and

IV. Whether or not the instant Petitions for Review were filed within the two-year prescriptive period as provided for in Section 112 (B) of the Tax Code.

The consolidation of two separate *Petitions for Review* seek the aggregate amount of P16,901,035.90 of unutilized input VAT paid on purchases of capital goods for the 1st and 2nd Quarters of 2000, broken down as follows:

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[43] Page 751, CTA Records
[44] Pages 725-742, CTA Records

CTA Case No.	Period Covered	Amount of Claim
6467	1st Quarter 2000	P 9,573,975.01
6512	2nd Quarter 2000	7,327,060.89
	TOTAL	**P16,901,035.90**

From the parties' *Joint Stipulation of Facts and Issues*, petitioner based its claim for refund or issuance of tax credit certificate from Section 112 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, which stated that a VAT registered taxpayer may apply for tax credit or a claim for refund of input taxes paid on purchases of capital goods, to the extent that such input taxes have not been applied against output tax.[45]

Section 112 (B) of the NIRC of 1997, as amended, states as follows:

> "**SECTION 112.** *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx 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**." *(Emphasis supplied)*

Enumerating the requisites narrated in the aforequoted provision:

> "1. That the taxpayer is a VAT-registered entity;
> 2. That it paid input taxes on capital goods imported or locally purchased;
> 3. That the input taxes have not been applied against its output taxes; and
> 4. That the application for refund or tax credit be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

To stress, the reckoning of the two (2)-year prescriptive period for the filing of a claim for input VAT refund on capital goods purchased is from the close of the taxable quarter when the importation or purchase was made. To illustrate:

[45] Paragraph 8, JSFI; Page 52, CTA Records

Period 2000	Close of the Quarter	Last day of the Two-Year Prescriptive Period
1st Quarter	March 31, 2000	April 1, 2002
2nd Quarter	June 30, 2000	July 1, 2002

From the foregoing, the close of the 1st and 2nd quarters is March 31, 2000 and June 30, 2000, respectively.

Applying Section 112 (B), petitioner had until March 31, 2002 and June 30, 2002 within which to file its claim. However, the said dates both fell on a Sunday. Pursuant to Section 1 of Rule 22 of the Revised Rules of Court, the last day within which petitioner may file its claim for refund or tax credit for the 1st and 2nd quarters falls on April 1, 2002 and July 1, 2002, respectively.

Based from the records of the case, petitioner filed its administrative claim and judicial case on the following dates:

Period	Date of Filing of the Administrative Claim	Date of Filing of the Petition for Review
1st Quarter	April 24, 2002	April 25, 2002
2nd Quarter	July 23, 2002	July 23, 2002

Perusal thereof will show that petitioner filed its administrative and judicial claim beyond the two-year prescriptive period reckoned from the close of the taxable quarter when the importation or purchase was made. Petitioner failed to consider the last paragraph included in the cited provision which require the filing of the application for refund or tax credit within the two (2) year period after the close of the taxable quarter when the importation or purchase was made.

Therefore, petitioner is barred from claiming refund of its alleged unutilized input taxes it paid on capital goods purchased for the 1st and 2nd quarters of 2000 due to prescription.

The discussion of the other issues is deemed unnecessary considering the findings of prescription.

WHEREFORE, in view of the foregoing, the *Petitions for Review* are hereby **DENIED** on the ground of prescription.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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