

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

SMI-ED PHILIPPINES LANDHOLDINGS, INC.,
Petitioner,

C.T.A. CASE NO. 6740

Members:

- versus -

ACOSTA, Chairman
BAUTISTA, and
CASANOVA, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 20 2006



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DECISION

BAUTISTA, L., J.:

Before Us is a Petition for Review under Section 11 of Republic Act No. 1125, as amended by Republic Act 9282, seeking the refund or issuance of a tax credit certificate in the amount of Eleven Million Two Hundred Ninety Nine Thousand Three Hundred Two Pesos and 81/100 (P11,299,302.81) allegedly representing accumulated unutilized input value-added tax payments in the course of petitioner's business operations until its permanent closure on November 30, 2002.

SMI-ED Philippines Landholdings, Inc. ("petitioner"), a corporation duly organized and existing under the laws of the Republic of the Philippines,¹ is engaged in the real estate business. It is registered with the Bureau of Internal Revenue ("BIR") as a registered value-added tax ("VAT") entity under Certificate of Registration No. IRC0000020526 and Taxpayer Identification Number 005 650 401 000.²

The Commissioner of Internal Revenue ("respondent") is authorized to decide, approve and grant refunds or tax credits of overpaid internal revenue taxes, among others, in accordance with Section 4 of the 1997 National Internal Revenue Code ("NIRC").

In a Lease Agreement dated July 9, 1998, First Philippine Industrial Park, Inc. agreed to lease to petitioner three (3) parcels of land with a total area of approximately 106,000 square meters, all located at Sto. Tomas, Batangas, with a monthly rental of US\$15,855.84 for a period of fifty (50) years commencing on July 9, 1998 and ending at midnight on July 8, 2048.³ The Lease Agreement further stipulated that the real properties shall be subleased by petitioner to SMI-ED Philippines Technology Incorporated ("SMI-ED Technology") from July 9, 1998 until July 8, 1999.⁴ SMI-ED Philippines Technology, Inc. paid a monthly rental of US\$18,421.00 beginning July 9, 1998.

¹ Exhibit A

² Exhibit B; par. 3, Stipulation of Facts, Rollo, p. 53

³ Exhibits AA-2 and AA-3

⁴ Par. 8.4, Article 1 of Exhibit AA

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On July 9, 1999, both parties agreed to increase the monthly rental to US\$50,211.00 but effective only for a period of one (1) year commencing on July 9, 1999 and to end on July 8, 2000.⁵

On September 30, 1999, the Deed of Absolute Sale was executed between First Philippine Industrial Park, Inc. and petitioner for the sale of the three (3) parcels of land comprising of 106,388 square meters for US\$9,323,229.92⁶ or for P378,709,866.00.⁷ However, petitioner paid the total purchase price of US\$10,255,552.91 as evidenced by Sales Invoice No. 0040⁸ and paid on the following dates:

<u>Date</u>	<u>Particulars</u>	<u>Amount</u>	<u>Exhibit</u>
May 25, 1998	security deposit	US\$ 951,350.00	LL
Aug. 31, 1999	initial payment	4,547,452.91	KK
Sept. 29, 1999	final payment	<u>4,756,750.00</u>	JJ
	Total	<u>US\$10,255,552.91</u>	

The amount of US\$10,255,552.91 included the 10% VAT in the amount of US\$932,322.00.⁹

On July 8, 2000, petitioner terminated its amended lease contract with SMI-ED Technology, Inc. and was no longer renewed because the latter corporation decided not to commence its business operations due to poor economic conditions in the Philippines.

On August 1, 2000 petitioner sold one of the parcels of land with a total area of 66,681 square meters to Ividen Philippines Landholdings, Inc. ("Ividen") in the amount of JY440,000,000.00, inclusive of 10% VAT.¹⁰

⁵ Exhibit F

⁶ Exhibit C

⁷ Par. 4, Stipulation of Facts, Rollo, p. 53

⁸ Exhibit J

⁹ Exhibit L

¹⁰ Exhibit D

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On July 18, 2002, petitioner again sold the remaining parcels of land with a total area of 39,707 square meters, to Ilden Philippines Landholdings, Inc. in the amount JY187,000,000.00, inclusive of VAT.¹¹

Considering that petitioner had no more properties left to lease or sell, majority of its Board of Directors, with the concurrence of the stockholders, resolved to dissolve petitioner's corporate existence effective November 30, 2002.¹²

On January 16, 2003, petitioner requested for the issuance of a tax clearance with the BIR in connection with its formal closure which took effect on November 30, 2002.¹³

On February 26, 2003, petitioner filed an administrative claim for refund or issuance of a tax credit certificate with the BIR, in the amount of P11,299,302.81 representing excess input VAT as of the time of its dissolution.¹⁴

The BIR's inaction on petitioner's claim for refund prompted petitioner to appeal before this Court on July 28, 2003.

In his Answer to the Petition, respondent raised the following Special and Affirmative Defenses:

"4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

5. Taxes paid and collected are presumed to have been made in accordance with the law and regulation, hence, not refundable;

6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

¹¹ Exhibit E

¹² Exhibit G

¹³ Exhibit H

¹⁴ Exhibit I

7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended; and

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).¹⁵

After trial on the merits, the case was submitted for decision sans the memorandum of the respondent.¹⁶

The issues for resolution by this Court are as follows:

1. Whether or not petitioner has unutilized input VAT in the amount of P11,299,302.81 as of November 30, 2002;
2. Whether or not petitioner's claim for refund/tax credit of unutilized input VAT as of November 30, 2002 in the amount of P11,299,302.81 is substantiated by documentary evidence; and
3. Whether or not petitioner is entitled to the claim of unutilized input VAT in the amount of P11,299,302.81 as of November 30, 2002.

As regards the first issue, petitioner presented several documents to prove that it has unutilized input VAT of P11,299,302.81 as of the fourth quarter of 2002, such as the Amended Quarterly VAT Returns for the 3rd and 4th quarters of 1999 (*Exhibits K & T*), and 1st quarter of 2000 (*Exhibit U*), amended return for 1st of 2000 (*Exhibit V*), the Quarterly VAT Returns for the 2nd and 3rd quarters of 2000, 1st and 2nd quarters of 2001, 2nd, 3rd and 4th quarters of 2002 (*Exhibits W, X, Y, Z, FF, GG & HH*) and Monthly Value Added Tax Declarations for the months of January, February and March of 2002 (*Exhibits CC, DD & EE*). It also submitted in evidence, a schedule of its output and

¹⁵ Rollo, p. 41

¹⁶ Rollo, p. 385

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input VAT transactions as appearing in its quarterly VAT returns filed with the BIR¹⁷ to prove that it has unutilized input VAT of P11,299,302.81 as of the fourth quarter of 2002, as follows:

	Output Tax	Input Tax Carried over from previous quarter	Domestic Purchases	VAT Refund/ TCC Claimed	Net Creditable Input Tax	VAT Payable
Year 2002						
4th Q	-	11,229,302.81			11,229,302.81	(11,229,302.81)
3rd Q	7,357,048.39	18,533,941.20	52,410.00		18,586,351.20	(11,229,302.81)
2nd Q		18,533,941.20			18,533,941.20	(18,533,941.20)
1st Q						
Year 2001						
4th Q						
3rd Q						
2nd Q		18,447,398.48	8,909.09		18,456,307.57	(18,456,307.57)
1st Q		18,456,307.57			18,456,307.57	(18,456,307.57)
Year 2000						
4th Q						
3rd Q	16,392,396.09	34,839,794.57			34,839,794.57	(18,447,398.48)
2nd Q	572,747.74	35,412,542.31			35,412,542.31	(34,839,794.57)
1st Q as amended	763,623.76	35,991,257.21			614,576.57	149,047.19
1st Q	614,576.57	3,599,157.21			35,991,257.21	(35,376,680.64)
** Total excess input tax for the 1st qtr as amended			(35,412,542.31)			
Year 1999						
4th Q	553,859.27	36,545,116.48			36,545,116.48	(35,991,257.21)
3rd Q as amended	541,388.77	92,861.33	36,993,643.92		634,249.27	(92,860.50)

From the above schedule, petitioner made input VAT payments in the sum of P37,147,824.34 for the following quarters:

<u>Per VAT Return for:</u>	<u>Input VAT</u>
Year 2002 - 3rd Quarter	P 52,410.00
Year 2001 - 2nd Quarter	8,909.09
Year 1999 - 3rd Quarter	36,993,643.92
carry-over from previous qtr.	92,861.33
Total	<u>P 37,147,824.34</u>

Likewise, the schedule indicates that petitioner had output tax liabilities in the sum of P26,181,064.02, detailed as follows:

¹⁷ Exhibit BB

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<u>Per VAT Return for</u>	<u>Output Tax</u>
Year 2002	
3rd Quarter	P 7,357,048.39
Year 2000	
3rd Quarter	16,392,396.09
2nd Quarter	572,747.74
1st Quarter, as amended	763,623.76
Year 1999	
4th Q	553,859.27
3rd Q as amended	<u>541,388.77</u>
TOT AL	<u>P 26,181,064.02</u>

However, a scrutiny of above schedule reveals that petitioner has unutilized input VAT in the amount of P10,966,760.32, instead of the claimed P11,299,302.81, computed as follows:

OUTPUT VAT

Year 2002		
3 rd Quarter	P 7,357,048.39	
Year 2000		
3 rd Quarter	16,392,396.09	
2 nd Quarter	572,747.74	
1 st Quarter, as amended	763,623.76	
Year 1999		
4 th Quarter	553,859.27	
3 rd Quarter, as amended	<u>541,388.77</u>	P26,181,064.02

Less: INPUT VAT

Year 2002		
3 rd Quarter	P 52,410.00	
Year 2001		
2 nd Quarter	8,909.09	
Year 1999		
3 rd Quarter	36,993,643.92	
Carry-over fr. Previous Qtr.	<u>92,861.33</u>	<u>P37,147,824.34</u>

Unutilized Input VAT **P10,966,760.32**

Thus, We proceed to the second issue of whether petitioner's claim of unutilized input VAT is substantiated by documentary evidence. A review of the documents

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presented before us shows that petitioner was only able to substantiate by proper VAT invoice and official receipts (*Exhibits J, JJ, KK & LL*) and Deed of Absolute Sale (*Exhibit C*), the input VAT payment of P36,993,643.92 on its purchase of land from the First Philippine Industrial Park. With respect to the input VAT payments of P52,410.00 and P8,909.09 for the 3rd quarter of 2002 and 2nd quarter of 2001, respectively, as well as the input tax carry-over of P92,861.33, it did not submit the VAT invoices and official receipts to substantiate the same. Hence, petitioner's substantiated unutilized input VAT amounts only to P10,812,579.90 (output VAT of P26,181,064.02 less substantiated input VAT of P36,993,643.92).

As to whether petitioner is entitled to the claimed unutilized input VAT for the subject period, We rule in the negative. Petitioner did not submit its VAT returns for taxable year 1998, 1st and 2nd quarters of 1999, 4th quarter of 2000, 3rd and 4th quarters of 2001 and 1st quarter of 2002. Without these documents, this Court cannot ascertain petitioner's actual unutilized input VAT as of November 30, 2002.

In addition, since the subject claim represents unutilized input VAT due to retirement from or cessation of business, it is vital that petitioner submit its audited financial statements in order for this Court to verify with certainty that it properly declared all of its sales/receipts for VAT purposes from the time of commencement of business until cessation of its operations. In this connection, it is also incumbent upon petitioner to prove that it has satisfied all its tax liabilities. Petitioner should have presented a Certificate of Tax Clearance showing that it has settled all its tax obligations with the BIR.

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Section 112 (C) of the 1997 NIRC and Section 4.106-2 of Revenue Regulations No. 7-95 provide:

SEC. 112. Refunds or Tax Credits of Input Tax. -

xxx xxx xxx

(C) *Cancellation of VAT Registration.* - A person whose VAT registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106 (C) this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

SEC. 4.106-2. Procedures for claiming refunds or tax credits of input tax – (a) xxx

(b) **Cancellation of VAT registration** -- A person whose VAT registration has been cancelled due to retirement from or cessation of status under Section 100(c) of the Code may, within two (2) years from the date of cancellation apply for the issuance of a tax credit certificate for any unused internal revenue taxes. However, he shall be entitled to a refund if he has no pending internal revenue tax liabilities.

Petitioner though offered in evidence its Letter Request for Tax Clearance¹⁸ to prove that upon its closure, it formally requested for a tax clearance from the BIR. As the document indicates, it was a mere request for a tax clearance. There is no showing that petitioner was indeed issued a Tax Clearance Certificate as required by law and regulations, to prove that it had been cleared of any or all internal revenue tax liabilities.

Thus, even assuming, for the sake of argument, that petitioner was able to substantiate is claimed unutilized input VAT for the subject period, it is still not entitled to a refund/tax credit thereof considering that it failed to prove that it has no pending internal revenue tax liabilities.

¹⁸ Exhibit H

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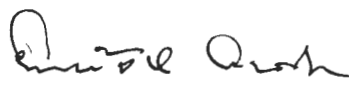
IN VIEW OF ALL THE FOREGOING, petitioner's claim for refund/tax credit of unutilized input VAT as of November 30, 2002 in the amount of P11,299,302.81 is hereby **DENIED**.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

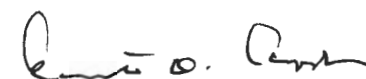


ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
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
Presiding Justice
Chairman, First Division

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