REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

CRESCENT PARK 14-678 PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8326

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
JUN 13 2013
10:55 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by Crescent Park 14-678 Property Holdings, Inc. (petitioner) to seek the refund or issuance of tax credit certificate in the amount of SIXTY-THREE MILLION SEVEN HUNDRED SEVEN THOUSAND SIX HUNDRED FIFTEEN PESOS AND 76/100 (P63,707,615.76), allegedly representing unutilized input value-added tax (VAT) for taxable year 2009.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Company Registration Number CS200719731, with principal office address at Unit 9-2, 9/F Net One Center, Bonifacio Global City, Taguig City.[1] It is a VAT-registered entity as evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN9RC0000259792

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, p. 156.

and Taxpayer's Identification Number 007-339-750-000.[2] Petitioner's registration with the BIR was made on August 4, 2009.[3]

Petitioner's primary purpose is to buy and acquire by purchase, lease or otherwise, lands, and interest in land and to own, hold, improve, promote, develop, subdivide and manage any land owned, held or occupied by the corporation or belonging to them; to construct, erect and manage or administer buildings such as condominiums, apartments, hotels, restaurants, stores or other structures now or hereafter erected on any land owned, held or occupied by petitioner.[4]

Respondent Commissioner of Internal Revenue is sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.

14-678 Property Holdings, Inc. ("14-678PHI" for brevity) is registered with the Philippine Economic Zone Authority (PEZA) as an ecozone facilities enterprise at the E-Square Information Technology Park with Registration Certificate No. 07-09-F (IT) dated July 4, 2007.[5] A Certification[6] has been issued by PEZA certifying that 14-678 PHI has incentives as provided in the Registration Agreement[7] with PEZA dated July 3, 2007, *viz:*

> "10.4 The REGISTRANT (14-678) shall be exempted from payment of all national and local taxes and in lieu thereof, it shall pay a five percent (5%) final tax on gross income earned from locator IT enterprises and related operations in accordance with the provisions of Rule XX of the Rules and Regulations Implementing Republic Act 7916, as amended. The REGISTRANT (14-678) shall pay for the real property taxes on commercial spaces occupied by non-PEZA registered enterprises."

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[2] Exhibit "B", docket, p. 224.
[3] Par. 3, JSFI, docket, p. 157.
[4] Exhibit "Z-1", docket, p. 321.
[5] Exhibit "E", docket, p. 259.
[6] Exhibit "F", docket, p. 260.
[7] Exhibit "H", docket, pp. 262-267.

Furthermore, it is stated therein that pursuant to BIR's Revenue Regulations No. 14-2002, income payments to PEZA-registered enterprises under the Income Tax Holiday and the five percent (5%) preferential Gross Income Tax incentives are exempt from expanded withholding tax. Another Certification[8] has been issued by PEZA with Certificate No. 2009-0526, which certifies that 14-678 PHI is a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services.

On August 3, 2009, petitioner purchased from its sister company, 14-678 PHI[9], four parcels of land located at 31st Street, Zamora Circle, Bonifacio Global City, Taguig City in the aggregate amount of FIVE HUNDRED THIRTY MILLION EIGHT HUNDRED NINETY-SIX THOUSAND SEVEN HUNDRED NINETY-EIGHT PESOS (P530,896,798.00).[10] As such, petitioner incurred a value-added tax on the said sale in the amount of SIXTY-THREE MILLION SEVEN HUNDRED SEVEN THOUSAND SIX HUNDRED FIFTEEN PESOS AND 76/100 (P63,707,615.76). Also on the same day, they entered into a Land Lease Agreement[11] of the same four parcels of land, with petitioner as the lessor and 14-678 PHI as the lessee. The purpose of the lease was in order for 14-678 PHI to use the land for the purpose of building and/or maintaining a PEZA-registered information technology building or facility that is open for lease by all business enterprises wishing to locate thereat. It was stipulated that it would be valid for twenty-five (25) years from August 3, 2009, with automatic renewal for 25 years. On August 13, 2009, they executed an Amended and Restated Land Lease Agreement[12].

On October 26, 2009, petitioner filed its 3rd Quarterly VAT Return[13] for taxable year 2009 with the Bureau of Internal Revenue and the same was amended[14] on November 11, 2009.

Petitioner filed a Letter[15] and an Application for Tax Credits/Refunds[16] with respondent on March 31, 2011 for the alleged unutilized input tax that petitioner incurred from the purchase of the four parcels of land. *gr*

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[8] Exhibit "G", docket, p. 261.
[9] TSN dated May 21, 2012, p. 6.
[10] Exhibit "D", docket, p. 245.
[11] Exhibit "W", docket, pp. 299-306.
[12] Exhibit "X", docket, pp. 308-316.
[13] Exhibit "K", docket, p. 275.
[14] Exhibit "L", docket, p. 276.
[15] Exhibit "I", docket, pp. 268-273.
[16] Exhibit "J", docket, p. 274.

On August 25, 2011, petitioner filed this instant Petition for Review.

Respondent filed an Answer[17] on October 28, 2011, interposing the following Special and Affirmative Defenses:

> "1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses;
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> 2. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;
>
> 3. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 4. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;
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> 5. It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
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> 6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php63,707,615.76, as alleged unutilized input VAT paid on purchases of goods (land) allegedly attributable to its zero-rated sales for the 3rd Quarter of 2009 was not fully substantiated by proper documents, such as sales invoices, official receipts and others;
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> 7. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990*

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[17] Docket, pp. 138-140.

cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206);

8. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)*."

On December 22, 2011, the parties filed their Joint Stipulation of Facts and Issues[18] and the Court approved it in the Resolution[19] dated December 27, 2011.

During trial, only petitioner presented documentary evidence as well as its witnesses, namely: Atty. Maria Cristina S. Samson and Mylene A. Bautista. On a hearing held on November 28, 2012, respondent's counsel manifested that she will no longer present evidence.

On January 24, 2013, the case was submitted for decision after the Court considered the respective Memorandum of petitioner and respondent filed on January 17, 2013 and January 22, 2013.

The parties raised the following issues[20] to be resolved by this Court:

"1. Whether petitioner is entitled to refund or issuance of tax credit certificate in the amount of **SIXTY THREE MILLION SEVEN HUNDRED SEVEN THOUSAND SIX HUNDRED FIFTEEN AND 76/100 (P63,707,615.76)**, representing unutilized VAT input taxes for the 3rd quarter of 2009 attributable to its zero rated sale of services.

a. Whether petitioner is a VAT Registered entity;

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[18] Docket, pp. 156-160.
[19] Docket, p. 163.
[20] Issues, JSFI, docket, pp. 157-158.

b. Whether petitioner is engaged in zero-rated or effectively zero-rated sales;

c. Whether the input taxes being claimed are due or paid;

d. Whether the input taxes being claimed have not been applied against output taxes during and in the succeeding quarters;

e. Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

f. Whether the claim is filed within two years after the close of the taxable quarter when such sales were made.

2. Whether or not the lease of property by petitioner to a PEZA-registered enterprise is subject to 12% or 0% VAT."

Petitioner argues that it is a VAT-registered enterprise as evidenced by its Certificate of Registration No. OCN9RC0000259792. It also alleges that 14-678 PHI, which is a PEZA-registered entity, is the sole customer/client of petitioner pursuant to the long-term lease agreement executed by them; thus, petitioner is engaged solely in zero-rated sales.

Further, petitioner states that it had input VAT for the 3rd quarter of taxable year 2009 in the amount of P63,707,615.76 arising from the purchase of the subject lands from 14-678 PHI. The portion of the selling price in the amount of P474,014,998.00 and the corresponding VAT of P56,881,799.76 were subsequently paid by petitioner as evidenced by official receipt[21] issued by 14-678 PHI to petitioner. It also claims that the input VAT amounting to P63,707,615.76 was not utilized nor credited against any output VAT during the 3rd quarter of taxable year 2009 and in the succeeding quarters, not until the 4th quarter of 2010 wherein petitioner claimed it as a VAT refund/TCC. Likewise, petitioner asserts that the said

[21] Exhibit "AA-1", docket, p. 330.

input taxes are attributable to zero-rated or effectively zero-rated sales.

Moreover, petitioner maintains that the administrative claim filed on March 31, 2011 is within the prescribed period of two years after the close of the taxable quarter when such sales were made. Therefore, petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P63,707,615.76, representing its unutilized input VAT attributable to its zero-rated sales of services in 2009.

Respondent counter-argues that petitioner's VAT registration became effective only on August 4, 2009, whereas the input VAT refund being claimed by petitioner covers the transaction dated August 3, 2009 as evidenced by Sales Invoice No. 051[22] issued by 14-678 PHI to petitioner. It therefore follows that prior to August 4, 2009, petitioner was not a registered enterprise under the VAT system. And not being then a VAT-registered person, it is not entitled to any tax credit/refund of input VAT paid for the period of August 3, 2009 pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, which states that the claimant must be a VAT-registered person.

Respondent further argues that petitioner failed to comply with some of the requisites provided by law for refund or issuance of tax credit certificate, namely: (1) the taxpayer must be engaged in zero-rated or effectively zero-rated sales; and (2) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. Since petitioner was not a VAT-registered entity on August 3, 2009, the land lease agreement executed on the said date between petitioner and 14-678 PHI could not be considered a zero-rated sale of service. Having no zero-rated transaction on August 3, 2009, petitioner's input taxes incurred on August 3, 2009 are not directly attributable to its zero-rated sales.

Furthermore, respondent alleges that petitioner's sales of services to 14-678 PHI shall be subject to 12% VAT. Petitioner's PEZA-registered client is only exempt from income taxes during their income tax holiday (ITH) and after the expiration of the ITH, it is only exempt from national and local taxes. All these taxes from which petitioner's PEZA-registered client shall enjoy exemption refer to

[22] Exhibit "Y", docket, p. 318.

direct taxes; however, the 12% VAT imposed on its purchases of goods, property or services is an indirect tax since the same is passed-on as part of the cost of its purchase. Thus, PEZA-registered enterprises' suppliers of services (petitioner in this case) cannot qualify for zero percent (0%) VAT, and shall be subject to 12% VAT on their sales to such PEZA-registered enterprises pursuant to Section 108 of the NIRC of 1997.

The Court will discuss first if the claim was filed within two years after the close of the taxable quarter when such sales were made.

Section 112 of the National Internal Revenue Code of 1997, as amended, provides:

> "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): *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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[23] *(Aichi case)*, the Supreme Court ruled that in case of tax refunds under Section 112 of the NIRC of 1997, as amended, the phrase "within two years" applies only to the filing of the administrative claim for refund and not to the filing of the judicial claim. Pertinent portions thereof are quoted hereunder:

> "There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person whose sales are zero-rated or effectively zero-rated may, **within two 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.' **The phrase 'within two (2) years xxx apply for the issuance of tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in**

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[23] G.R. No. 184823, October 6, 2010.

support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA." *(Emphasis supplied)*

Applying the foregoing to the present case, the two-year period to file an administrative claim for refund or issuance of tax credit certificate for the alleged unutilized input VAT for the period covering July 1, 2009 to September 30, 2009 expired on September 30, 2011. Petitioner both filed its Letter with the supporting documents[24] and its Application for Tax Credits/Refunds[25] with respondent on March 31, 2011. It is clear that the administrative claim was filed within two years after the close of the taxable quarter when the zero-rated sales were made.

Moreover, respondent has 120 days from the date of submission of petitioner's supporting documents for the claim for refund or issuance of tax credit certificate or from March 31, 2011 until July 29, 2011 to act on the claim. Upon failure of respondent to act on the claim within the prescribed period, petitioner filed this instant Petition for Review on August 25, 2011, three days before the lapse of the thirty-day period prescribed by law within which to appeal the unacted claim. Clearly, both the administrative and the judicial claimswere timely filed.

The Court will now proceed to address the issue of whether petitioner is entitled to refund or issuance of tax credit certificate

[24] Exhibit "I", docket, pp. 268-273.
[25] Exhibit "J", docket, p. 274.

representing its alleged unutilized input VAT attributable to its zero-rated sale of services.

Under Section 112(A) of the NIRC of 1997, in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be satisfied:

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3. the claim must be filed within two years after the close of the taxable quarter when such sales were made; and
4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.[26]

Petitioner is VAT-registered as evidenced by its Certificate of Registration[27] dated August 4, 2009. However, the records show that the execution of the Deed of Absolute Sale of Land on Installment and the effectivity of both the Land Lease Agreement and the Amended and Restated Land Lease Agreement between petitioner and 14-678 PHI were on August 3, 2009. It is clear from the foregoing that when the transactions were made, petitioner was not a VAT-registered entity.

In Section 110(A)(3)(b)(2)of the NIRC of 1997, input tax has been defined as:

> "The term 'input tax' means the **value-added tax due from or paid by a VAT-registered person** in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code."*(Emphasis supplied)*

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[26] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

[27] Exhibit "B", docket, p. 224.

Petitioner paid the alleged input tax on August 3, 2009 as indicated in the Sales Invoice[28] issued by 14-678 PHI at the time petitioner was not yet registered as a VAT taxpayer. Based on the foregoing, petitioner, being a non-VAT taxpayer, cannot claim that it incurred input taxes.

Furthermore, before the services rendered to persons or entities whose exemption under special laws effectively subjects the supply of such service to zero percent (0%) rate, it **must be performed in the Philippines by VAT-registered persons**[29]. Therefore, petitioner's sale of service to 14-678 PHI on August 3, 2009 is not yet attributable to zero-rated or effectively zero-rated sales.

Moreover, the Supreme Court held in the case of *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*[30] that VAT registration is indispensable to VAT refund.

Likewise, in the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[31], the Highest Tribunal held in this wise:

> "Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed, nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a *clear and unequivocal provision of law* on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government."

Therefore, the claim of petitioner for refund or issuance of tax credit certificate must fail.

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[28] Exhibit "Y", docket, p. 318.
[29] Section 108(B)(3) of the NIRC of 1997.
[30] G.R. No. 153866, February 11, 2005.
[31] G.R. No. 188497, April 25, 2012.

On the second issue, it is clear that petitioner is not VAT-registered, not until August 4, 2009. As provided in Section 108(B)(3) of the NIRC of 1997, services performed in the Philippines by VAT-registered person to persons or entities whose exemption effectively subjects the supply of such services to zero percent rate shall be considered as zero-rated or effectively zero-rated sales. Since petitioner became a VAT-registered entity on August 4, 2009, its sales of service as of that date are considered zero-rated or effectively zero-rated sales.

However, the earlier ruling that petitioner cannot file a claim for refund or for issuance of tax credit certificate still stands. The amount claimed by petitioner for refund originates solely from the sale of the four parcels of land previously owned by 14-678 PHI, which was executed on August 3, 2009. This has been likewise alleged in petitioner's Memorandum[32], to wit:

> "As indicated in the Deed of Sale, the subject lands were sold for a total consideration of P530,896,798.00 with a corresponding VAT of SIXTY THREE MILLION SEVEN HUNDRED SEVEN THOUSAND SIX HUNDRED FIFTEEN & 76/100 PESOS (P63,707,615.76.00). xxx."*(Citation omitted)*

Based on the foregoing, the alleged unutilized input tax that petitioner seeks to be refunded is the VAT on the said sale executed on August 3, 2009. As explained earlier, on August 3, 2009, petitioner was not a VAT-registered entity. Hence, it cannot claim that it incurred input tax at the time of the sale.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[32] Docket, p. 463.

WE CONCUR:

CAESAR A. CASANOVA Associate Justice	**CIELITO N. MINDARO-GRULLA** Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice