REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TECHNIRAIL S.A. – PHILIPPINE BRANCH,
Petitioner,

C.T.A. CASE NO. 6638

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 0 9 2007; 10:50 AM

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DECISION

BAUTISTA, L., J.:

This case seeks the refund or issuance of a tax credit certificate of petitioner's alleged overpaid/excess creditable value-added taxes withheld for the 1st, 2nd, 3rd and 4th quarters of the taxable year 2001 in the total amount **of SIX MILLION SEVEN HUNDRED SEVENTY FOUR THOUSAND FOUR HUNDRED EIGHT AND 15/100 PESOS (P6,774,408.15)**, broken down as follows:

Period Covered	Claimed Creditable VAT Withheld
1st Qtr	P 2,094,879.18
2nd Qtr	1,081,679.73
3rd Qtr	1,262,962.38
4th Qtr	2,334,886.86
TOTAL	P6,774,408.15

Petitioner **TECHNIRAIL, S.A. – PHILIPPINE BRANCH** is a resident foreign corporation duly organized and existing under the laws of Belgium and duly licensed to do business in the Philippines through a branch, with address at Raha Sulayman Building, 108 Benavidez Street, Legaspi Village, Makati City.[1] It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer and as a withholding agent as evidenced by BIR "Certificate of Registration" RDO Control No. 98-047-009109 and Tax Identification No. (TIN) 047-005-300-338.[2]

Respondent **Commissioner of Internal Revenue** is the duly appointed Commissioner of the BIR authorized under the law to perform the duties of the said office, including, *inter alia*, the power to act and approve claims for refund or tax credit. He holds office at the 4th floor, BIR National Office Building, Diliman, Quezon City.

Petitioner is engaged in the business of supplying mass transport equipment and of repairing and rehabilitating the light rail transit system as evidenced by its license to do business numbered A-1998-379 issued by the Securities and Exchange Commission (SEC) on February 5, 1998.[3] The Light Rail Transit Authority (LRTA), a Philippine government agency, was among the entities with whom petitioner rendered renovation and rehabilitation services.[4]

During the four quarters of the taxable year 2001, petitioner provided various renovation and rehabilitation services to the LRTA, for which petitioner received payments for the services rendered. Consequently, in accordance with Section 114(C) of the

[1] Par 1, Joint Stipulation of Facts and Issues, CTA Docket, page 95.
[2] Par. 4, Joint Stipulation of Facts and Issues, CTA Docket, page 95.
[3] Par. 3, Joint Stipulation of Facts and Issues, CTA Docket, page 95.
[4] Par. 5, Joint Stipulation of Facts and Issues, CTA Docket, page 96.

National Internal Revenue Code of 1997,[5] LRTA withheld Creditable VAT[6] on the said payments to petitioner, broken down as follows:

Quarter Covered	Creditable VAT Withheld
1st	P 6,244,950.89
2nd	5,953,706.83
3rd	7,797,273.93
4th	4,668,605.85
Total	P 24,664,537.50

For the taxable year 2001, petitioner filed its Original Quarterly VAT Returns[7] for the 1st, 2nd, 3rd and 4th quarters on April 25, 2001, July 25, 2001, October 25, 2001 and January 25, 2002, respectively, which reflected the following details:

Qtr	Output VAT	Creditable Input VAT	VAT Payable	VAT Payments/Creditable VAT Withheld	Overpayments/ Excess Creditable VAT
1st	8,495,598.49	4,140,437.08	4,355,161.41	6,313,675.73	1,958,514.32
2nd	9,936,980.14	5,047,238.94	4,889,741.20	5,953,706.83	1,603,965.63
3rd	11,534,070.80	4,936,307.99	6,597,762.81	7,797,273.93	1,199,511.12
4th	7,805,224.35	5,434,620.03	2,370,604.32	4,668,605.85	2,298,001.54

Subsequently, petitioner filed its Amended Quarterly VAT Returns[8] for the four quarters of the taxable year 2001 on the following dates and with details as follows:

Date Filed	Qtr	Output VAT	Creditable Input VAT	VAT Payable	VAT Payments/Creditable VAT Withheld	Overpayments/ Excess Creditable VAT
7/25/01	1st	8,495,598.49	4,276,801.94	4,218,796.55	6,313,675.73	2,094,879.18
10/25/01	2nd	9,936,980.14	5,064,953.04	4,872,027.10	5,953,706.83	1,081,679.73
1/28/02	3rd	11,534,070.80	4,999,759.25	6,534,311.55	7,797,273.93	1,262,962.38
4/25/02	4th	7,805,224.35	5,441,082.90	2,364,141.45	4,668,605.85	2,304,464.40
7/25/02	4th	7,805,224.35	5,471,505.35	2,333,718.99	4,668,605.85	2,334,886.86

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[5] **SEC. 114. Return and Payment of Value-Added Tax. –**

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(C) Withholding of Creditable Value-Added Tax. - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in SectionS 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against value-added tax liability of the seller or contractor: *Provided, however,* That in case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, further,* That the payment for lease or use of property or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time pf payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

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[6] Exhibits S, T, U, V, W, X, Y, Z, AA, BB, CC and DD.

[7] Exhibits A, C, E and G.

[8] Exhibits B, D, F, H and I.

Based on petitioner's Amended Quarterly VAT Returns for the taxable year 2001, it has an overpayment/excess creditable VAT withheld in the total amount of P6,774,408.15. Alleging that it did not apply the overpaid/excess subject creditable VAT withheld as tax credits for the succeeding quarters of the succeeding taxable years, the same remained unutilized.

On March 28, 2003, petitioner then filed with the respondent a claim for refund of the overpaid/excess creditable VAT withheld for the four (4) quarters of 2001 attributable to its transactions with the LRTA amounting to P6,774,408.15.[9] Three days later or on March 31, 2003, petitioner elevated its claim with this Court through a Petition for Review.

In his Answer filed through registered mail on May 23, 2003, respondent raised the following as his Special and Affirmative Defenses, to wit:

4. In the petition, the total creditable input being claimed by petitioner for the 1st, 2nd, 3rd and 4th quarters of taxable year 2001 were all erroneously computed and deducted. Under Section 111(B)(2) of the NIRC, it is expressly provided that: ***"Public Works contractors*** *shall be allowed a presumptive input tax equivalent to* ***one and one-half percent (1½%) of the contract price*** *with respect to government contracts only* ***in lieu of actual input taxes therefrom.***" Therefore, the input taxes that the petitioner should be properly allowed to deduct from its input taxes as provided for by law should be one and one-half percent (1½%) of the contract price and not ten percent (10%) as what has been adopted and applied by petitioner;

5. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

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

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

8. 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;

9. It is incumbent upon the petitioner to show that is has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended; and

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[9] Par. 9, Joint Stipulation of Facts and Issues, CTA Docket, page 96.

10. Claims for refund are construed strictly against the claimant for the same partakes of the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. *(sic)* 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).

After hearing the parties during the trial, this Court issued a Resolution on July 6, 2006 ordering this case submitted for decision taking into consideration the respective memoranda filed by the parties.

The parties have jointly stipulated that the following are the issues to be resolved by this Court:

1. Whether the LRTA withheld creditable VAT in the total amount of P24,664,537.50 from its payments to petitioner for taxable year 2001, pursuant to Section 114(C) of the National Internal Revenue Code of 1997;

2. Whether petitioner has overpaid/excess creditable VAT withheld for the four quarters of taxable year 2001 in the total amount of P6,774,408.15, which entitles it to a claim for refund/tax credit;

3. Whether petitioner's claim for refund of overpaid/excess creditable VAT withheld for the four quarters of 2001 is substantiated by documentary evidence;

4. Whether petitioner is entitled to the refund of or issuance of a tax credit certificate for the amount of P6,774,408.15 representing overpaid/excess creditable VAT withheld for the first, second, third and fourth quarters of 2001; and

5. Whether the rate of input tax that should be allowed to be deducted from petitioner's output taxes is 10%, as applied by petitioner, or 1½% of the contract price (presumptive input tax) as provided expressly under Section 111(B)(2) of the NIRC.

Considering that the first three issues are interrelated and all involving the factual bases of this instant claim, this Court shall discuss them jointly.

To prove that the LRTA had indeed withheld the total amount of P24,664,537.50 from its payments to petitioner for the taxable year 2001 pursuant to Section 114(C) of the National Internal Revenue Code of 1997, petitioner presented in evidence its Original and

Amended Monthly and Quarterly VAT Returns for the taxable year 2001[10] as well as Certificates of Creditable Tax Withheld at Source issued by the LRTA.[11] Petitioner likewise presented a Summary of its Purchases[12] to prove that its corresponding input VAT paid agree with the amount indicated in its monthly and quarterly VAT declarations/returns. Official receipts and invoices were also offered to prove that the amounts of output and input taxes reported in petitioner's VAT returns are properly substantiated by supporting documents.

A close examination of the documents presented reveals that petitioner's monthly and quarterly VAT returns are properly supported by the summary of purchases with the corresponding input VAT paid. The amounts stated in the Summary of Purchases with the corresponding input VAT agree with amount indicated as such in petitioner's monthly and quarterly VAT declarations. The said documents however reveal that of the total creditable VAT withheld by LRTA amounting to P24,664,537.50 , only the amount of P23,429,335.53 was properly supported by petitioner's Creditable Withholding Tax Certificates. The difference of **P1,235,201.97** (P24,664,537.50 – P23,429,335.53) does not have corresponding creditable tax certificates for which this Court can properly consider. Accordingly, petitioner was able to show proof to establish the fact of withholding by LRTA of the claimed creditable VAT only in the amount of P23,429,335.53 which it can validly apply or utilize against its output VAT liability.

As regards the second and third issues, it was verified by the Court-commissioned Independent Certified Public Accountant (CPA), Ma. Wencita C. Salvador,[13] that petitioner's total creditable Vat withheld amounts to P24,664,537.50 and that only the amount of P17,952,946.20 was utilized/applied against its tax liabilities, leaving the amount of P6,711,591.29 as unutilized creditable VAT. Moreover, as established by the Court-

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[10] Exhibits A to R, inclusive.
[11] Exhibits S to DD, inclusive.
[12] Exhibit FF.
[13] Exhibit GG.

Commissioned Independent CPA, an examination of the source documents to support the input VAT claimed, certain sales invoices and purchases in the total amount of **P5,185.61** pertaining to the 3rd quarter of the taxable year 2001 are unavailable.

In this regard, of the total unutilized creditable VAT in the amount of P6,711,591.29, only the adjusted amount of P5,471,203.71 [P6,711,591.29 – (P1,235,201.97 + P5,185.61)] may be considered as a valid claim for refund or issuance of a tax credit certificate of excess or unutilized creditable VAT withheld by LRTA.

Anent the legal issue of petitioner's claim for refund, this Court finds petitioner not legally entitled.

At this point, Sections 110(A)(1) and (B) as well as 112(A) of the National Internal Revenue Code (NIRC) of 1997 pertaining to VAT refunds are controlling. For easy reference, Sections 110 (A)(1) and (B) are hereunder reproduced:

> **SEC. 110. Tax Credits. –**
>
> **(A) Creditable Input Tax. –**
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> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
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> xxx xxx xxx
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> **(B) Excess Output or Input Tax.** - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. **If the input tax exceeds the output tax, the excess shall be <u>carried over to the succeeding quarter or quarters</u>. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.** *(Emphasis and underscoring supplied)*

Thus, based on the foregoing, if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters and any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may, at his option, be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112 of the same Code.

Generally then, in the case of excess input tax, the excess shall be carried over to the succeeding quarter or quarters, save for the instances mentioned under Section 112 of the NIRC of 1997, *viz*:

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

(A) **Zero-rated or effectively Zero-rated Sales**. – Any VAT registered persons, 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.

(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.

(C) **Cancellation of VAT Registration**. - A person whose 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) of 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. *(Emphasis supplied)*

In short, there are only three specific cases when a refund or the issuance of a tax credit certificate of input tax may be granted or allowed, to wit:

1. zero rated or effectively zero-rated sales, such as (a) export sales[14] and (b) foreign currency denominated sales[15];

2. input taxes paid on imported or locally purchased capital goods; and

3. cancellation of VAT registration due to retirement from or cessation of business or due to changes in or cessation of VAT status.

[14] Section 106(A)(2)(a), National Internal Revenue Code of 1997.
[15] Section 106(A)(2)(b), *ibid.*

Pursuant to **Sections 106(A)(2)(a)(1) and (2)** of the NIRC of 1997, the term "zero-rated" or "effectively zero-rated" sales contemplates export sales, which can either be a (a) sale and actual shipment of goods from the Philippines to a foreign country, or (b) sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods.

It is clear from the records of the case that petitioner's situation does not fall within any of the aforementioned instances when a tax refund may be granted or allowed. It is undisputed that petitioner is a resident foreign corporation engaged in the supplying of mass transport equipment and of repairing and rehabilitating the light rail transit system. It does not fall under the definition of export sales, nor does its claim refer to its importation or locally purchase of capital goods, and definitely not under the category of Section 112(C)[16] of the NIRC of 1997. Nevertheless, petitioner is not without any remedy. In accordance with Section 110(B) above-quoted and as implemented by Section 4.104-4 of Revenue Regulations No. 7-95, petitioner can carry over the excess or unutilized input VAT to the succeeding taxable months or quarters.

It must be emphasized that in the absence of a special law wherein petitioner would qualify for a tax refund of its claim for excess creditable VAT withheld, petitioner is definitely not entitled to its claim. The enumerations as set forth in Sections 110 and 112 of the NIRC of 1997 cannot be made any clearer. It is well-settled that an express mention of one person, thing, act, or consequence excludes all others *(expressio unius est exclusio alterius).* This rule proceeds from the premise that the legislature would not have made specific enumerations in a statue had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[17]

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[16] Section 112 (C), Cancellation of VAT Registration.
[17] Commissioner of Customs vs. Court of Tax Appeals and Litonjua Shipping Company, represented by Grandexport Corporation as sub-agent, G.R. Nos. 48886-88, July 21, 1993.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit.

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
Presiding Justice
Chairperson, First Division