REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TECHNIRAIL S.A. – PHILIPPINE BRANCH,
Petitioner,

C.T.A. CASE NO. 6416

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 1 6 2007

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DECISION

CASTAÑEDA, JR., *J*.:

Before Us is a Petition for Review seeking the refund or issuance of a Tax Credit Certificate in the amount of P9,164,964.93 allegedly representing overpaid/excess creditable value-added taxes withheld for the first, second, third, and fourth quarters of 2000.

Petitioner 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, which has address at Raha Sulayman Building, 108 Benavidez St., Legaspi Village, Makati City.[1]

Respondent is the Commissioner of Internal Revenue, duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner is registered with the Bureau of Internal Revenue ("BIR") as a value-added tax ("VAT") taxpayer and as a withholding agent.[2] It is engaged in the business of supplying mass transport equipment and of repairing and rehabilitating the light rail transit system as shown by its license to do business issued by the Securities and Exchange Commission dated February 5, 1998.[3]

Petitioner entered into a contract with the Light Rail Transit Authority ("LRTA"), a government owned or controlled corporation, for the renovation and rehabilitation of light rail vehicles.[4]

Pursuant to Section 114 (C) of the National Internal Revenue Code of 1997, as amended, the LRTA allegedly withheld the creditable VAT at the rate of 8.5% based on the gross payments it made to petitioner pursuant to its contract. For the four (4) quarters of 2000, the creditable VAT withheld by LRTA allegedly amounted to P22,592,482.06, broken down as follows:

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[1] Par. 1, Stipulation of Facts, Records, p. 110.
[2] Par. 4, Stipulation of Facts, Records, p. 111.
[3] Par. 3, Stipulation of Facts, Records, p. 111.
[4] Par. 5, Stipulation of Facts, Records, p. 111.

Year 2000	VAT Withheld
1st Quarter	P 6,466,882.19
2nd Quarter	3,260,141.12
3rd Quarter	1,531,819.16
4th Quarter	11,333,643.59
Total	**P22,592,486.06**

Petitioner filed its original quarterly VAT returns for the first, second, third, and fourth quarters of 2000 on April 25, 2000, July 25, 2000, October 25, 2000 and January 25, 2001, respectively.[5]

Subsequently, petitioner filed its amended quarterly VAT returns for the first, second and third quarters of 2000 on March 1, 2002 and its amended quarterly VAT return for the fourth quarter of 2000 on April 25, 2001.[6]

In its amended VAT returns for the four taxable quarters of 2000, petitioner declared the following excess creditable VAT withheld:

	1st Quarter (Exhibit E)	**2nd Quarter (Exhibit F)**	**3rd Quarter (Exhibit G)**	**4th Quarter (Exhibit H)**
Sales/Receipts	P76,080,966.90	P38,354,601.40	P23,405,532.47	P142,447,247.70
Output Tax	P 7,608,096.69	P 3,835,460.14	P 2,340,553.25	P 14,244,724.77
Less: Input Tax				
Carried-Over from Previous Quarter	P 6,886,624.17	P 684,607.93	P -	P -
Domestic Purchases for the Quarter	1,406,080.45	570,007.69	2,002,153.74	3,602,677.97
Importation of Goods for the Quarter	-	-	14,444.38	36,771.92
Total Available Input Tax	P 8,292,704.62	P 1,254,615.62	P 2,016,598.12	P 3,639,449.89
VAT Payable (Excess Input Tax)	P (684,607.93)	P 2,580,844.52	P 323,955.13	P 10,605,274.88
Less: Tax Credits/Payments				
Quarterly Payments	P -	P -	P 82,553.39	P -
Creditable VAT Withheld	6,466,882.19	3,260,141.12	1,531,819.16	11,333,643.59
Total	P 6,466,882.19	P 3,260,141.12	P 1,614,372.55	P 11,333,643.59
Tax Payable/(Overpayment)	P(7,151,490.12)	P (679,296.60)	P(1,290,417.42)	P (P728,368.71)

5 Exhibits "A", "B", "C", and "D", respectively; par. 7, Stipulation of Facts, Records, p. 112.
6 Exhibits "E" to "E-5", "F" to "F-6", "G" to "G-6", and "H to "H-6" respectively; Par. 8, Stipulation of Facts, Records, p. 112.

Petitioner avers that it was not able to fully utilize the creditable VAT withheld by LRTA since it incurred input VAT from its domestic purchases of goods and/or services and importation of goods and the input VAT incurred was used to offset the output VAT due on its sales of services. Moreover, the VAT payable, if any, was less than the creditable VAT withheld for the corresponding quarter. Hence, for the four quarters of 2000, petitioner allegedly had excess creditable VAT withheld in the amount of P9,164,964.93, broken down as follows:

Year 2000	VAT Withheld
1st Quarter	P 6,466,882.19
2nd Quarter	679,296.60
3rd Quarter	1,290,417.42
4th Quarter	728,368.71
Total	**P 9,164,964.93**

Believing that the said excess creditable VAT withheld of P9,164,964.93 may be considered erroneous payment of taxes, which may be the subject of a claim for refund pursuant to Section 204(C) of the NIRC of 1997, petitioner filed with the BIR on March 21, 2002, an application for the refund or issuance of a tax credit certificate covering the overpaid/excess creditable VAT withheld for the first, second, third and fourth quarters of 2000.[7]

In order to toll the running of the two-year prescriptive period under the law and to preserve petitioner's right to judicially claim the refund or tax credit, petitioner filed the instant Petition for Review with this Court on March 26, 2002.[8]

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[7] Par. 9, Stipulation of Facts, Records, p. 112.
[8] Par. 12, Stipulation of Facts, Records, p. 112.

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In his Answer filed via registered mail on June 4, 2002, respondent interposed the following Special and Affirmative Defenses:

> 4. Under Section 111 (B)(2) of the National Internal Revenue Code of 1997, 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, hence petitioner is no longer entitled to the other input taxes which is used to offset its VAT due for the four quarters of 2001;
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> 5. Thus, petitioner's creditable value-added tax withheld for the four quarters of 2000 were not even sufficient to cover its value-added tax due for the same quarters, therefore, not refundable and petitioner failed to avail of the presumptive input tax;
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> 6. Amendment of the returns of petitioner is allowed provided that no notice for audit or investigation of such returns has, in the meantime, been actually served upon the petitioner;
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> 7. 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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> 8. Petitioner failed to show that the alleged creditable VAT was not carried over and utilized against the value-added tax liability of the petitioner in the succeeding quarters or year;
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> 9. Claims for refund construed [are] strictly against 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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> 10. 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
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> 11. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

The parties jointly stipulated on the following issues for resolution of this Court, to wit:

> 1. Whether or not public works contractors, being allowed a one and one-half percent (1½%) presumptive input tax of the contract price, are still entitled to other input taxes;
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> 2. Whether or not petitioner has overpaid its creditable VAT;

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3. Whether or not petitioner has complied with the substantiation requirements under Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 7-95; and

4. Whether or not the alleged input taxes subject matter of the instant case has not been applied to the output VAT during the period of claim or succeeding quarters.

Petitioner based its claim on the provisions of Section 114 (C) and Section 204 (C) of the National Internal Revenue Code ("NIRC") of 1997, as amended, which read:

> "SEC. 114. *Return and Payment of Value Added Tax.* –
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> xxx xxx xxx
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> (C) *Withholding of Creditable Value-Added Tax.* – The Government or any 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 Section 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 the value-added tax liability of the seller or contractor: *Provided, however*, That in the case of government public work contractors, the withholding rate shall be eight and one-half percent (8.5%): *Provided, further*, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent."
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> "SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use

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> and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner of a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

The mandated withholding VAT under Section 114 (C) above quoted is in the nature of a *creditable prepaid output VAT* which shall be applied against the taxpayer's output VAT liability. However, in case the taxpayer has no more output VAT liability against which the creditable VAT withheld maybe applied or credited, such creditable VAT withheld constitutes excessively or erroneously paid tax which is refundable under Section 204 (C) of the NIRC of 1997.

Anent the first stipulated issue, respondent submits that petitioner's creditable VAT withheld for the four quarters of 2000 were not even sufficient to cover its VAT due for the same quarters and is therefore not refundable and that petitioner failed to avail of the presumptive input tax.

Indeed, records would show that in all the quarterly VAT returns[9] (original or amended) filed by petitioner, it has not availed of the 1½% presumptive input tax precisely because it intended to avail actual input taxes which it in fact did as will be discussed below. Moreover, under Section 111 (B)(2) of the 1997 Tax Code, as amended, public work contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1½%) of the contract prices with respect to government contractors only in lieu of the actual input taxes therefrom.

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[9] Exhibits "A", "B", "C", "D", "E", "F", "G" and "H".

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The second, third and fourth stipulated issues shall be discussed jointly as they are inter-related.

Based on its VAT returns for the four quarters of 2000, petitioner's VAT transactions for the same period may be summarized as follows:

Taxable Receipts		P 280,288,348.47
Output Tax		P 28,028,834.85
Less:	Input Tax	
	Carried-over from prev qtr	P 6,886,624.17
	Domestic purchases this qtr	7,580,919.85
	Importation of goods this qtr	51,216.30
	Total available input tax	P 14,518,760.32
VAT Payable (Excess Input Tax)		P 13,510,074.53
Less:	Tax Credits/Payments	
	Quarterly Payments	P 82,553.39
	Creditable VAT Withheld	22,592,486.06
		P 22,675,039.45
Tax Payable/(Overpayment)		P (9,164,964.92)

The above summary indicates that petitioner had an output VAT liability for the year 2000 in the amount of P28,028,834.85 which was deducted from the total available input tax of P14,518,760.32 leaving a VAT still payable in the amount of P13,510,074.53. After offsetting the amount of P13,510,074.53 against the reported quarterly payments of P82,553.39 and creditable VAT withheld of P22,592,486.06, petitioner has still a creditable VAT withheld in the amount of P9,164,964.92.

However, in order to be entitled to a refund of the excess creditable VAT withheld of P9,164,964.92, petitioner must substantiate the total amounts reflected in its quarterly VAT returns pertaining to its: a) output tax; b) input tax; c) quarterly payments; and d) creditable VAT withheld.

A. Output Tax

Upon examination of petitioner's output tax as reflected in its VAT returns *vis-à-vis* the Summary List of Sales and related official receipts, the commissioned auditing firm, SGV & Co., noted that petitioner's declared output tax for the four quarters of 2000 in the amount of P28,028,834.85 was overstated by P5,686,689.66.

This was allegedly brought about by: a) the inclusion of the output tax of P5,982,985.00 on retention fees withheld by LRTA at the time of retention and on the mobilization fees previously advanced by LRTA; and b) an error made by petitioner in its 4th quarter 2000 Summary List of Sales.[10]

Considering that petitioner did not file amended VAT returns to effect the downward adjustment of P5,686,689.66, this Court shall consider the output tax of P28,028,834.85 as the final and binding figure.

B. Input Tax

Petitioner's total available input VAT for the year 2000 amounted to P14,518,760.32 consisting of the input VAT carried-over from the previous quarter in the amount of P6,886,624.17 and input VAT incurred during the four quarters of 2000 in the amount of P7,632,136.15.

To be creditable against petitioner's output VAT liability for the year 2000, the total input VAT of P14,518,760.32 must be supported by proper VAT invoices *(in cases where the input taxes pertain to purchase of goods)* and VAT official receipts *(in cases where the input taxes pertain to purchase of services)*.

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[10] Exhibits "FF" and "QQ".

This Court has consistently ruled that the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, meaning upon the issuance by the seller of the VAT invoice to evidence the sale of goods or properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, which means upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.[11]

Further, the invoices and official receipts must contain the seller's name, TIN, the BIR authority to print or BIR permit number and other information required under Section 113 of the NIRC of 1997, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, as amended.

We will now determine whether petitioner has complied with the above requirements.

As regards the input VAT carry-over of P6,886,624.17, this Court found that petitioner failed to present VAT invoices or official receipts to prove the existence of the such amount. Hence, the input tax carry-over of P6,886,624.17 cannot be validly applied against petitioner's output tax for the year 2000.

With reference to the reported input tax for the four quarters of 2000 in the amount of P7,632,136.15, the commissioned auditing firm, SGV & Co., in its report dated May 24, 2004,[12] summarized its findings as follows:

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[11] Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 53, June 7, 2005.
[12] Exhibit "QQ".

	Nature	Amount
1.)	Input taxes claimed on purchases of goods supported by VAT invoices	P805,736.08
2.)	Input taxes claimed on purchases of services supported by VAT ORs	683,205.87
3.)	Input taxes claimed on purchases of services supported by documents other than VAT ORs (i.e. statement of account)	20,680.41
4.)	Input taxes claimed on purchases of services supported by VAT ORs without BIR permit	81,005.82
5.)	Input taxes claimed on purchases of goods supported by Non-VAT invoices	3,799.99
6.)	Input taxes claimed on purchases of goods supported by VAT ORs	128,894.04
7.)	Input taxes claimed on purchases of goods supported by provisional receipts	2,080.00
8.)	Input taxes claimed on purchases of goods not within the period of claim (i.e., fourth quarter of year 1999)	19,428.37
9.)	Input taxes claimed on purchase of goods supported by photocopied VAT invoices	466.36
10.)	Input taxes claimed on purchases of goods and services not yet verified	5,834,404.35
11.)	Input taxes claimed on importations not yet verified	51,216.30
12.)	Input tax claimed on purchase of services not within the period of claim (i.e. fourth quarter of year 1999)	83.09
13.)	Input tax claimed on purchases of goods supported by invoices not in the name of the Company	1,021.83
14.)	Input tax claimed on purchase of goods supported by invoice with stamped TIN only	113.64
	TOTAL	**P7,632,136.15**

This Court finds the SGV & Co. report in order. Out of the reported total input VAT incurred during the year 2000 of P7,632,136.15, petitioner may validly claim as input tax credit only the amount of P1,488,941.95 representing the sum of the input taxes of P805,736.08 on purchases of goods supported by VAT invoices and input taxes of P683,205.87 on purchases of services supported by VAT official receipts (*Nos. 1 and 2 of the Findings*). The remaining input taxes in the amount of P6,143,194.20 would have to be denied for petitioner's failure to substantiate the same pursuant to the above discussed requisite.

It must be emphasized that included in the total disallowance of P6,143,194.20 are input taxes in the amounts of P5,834,404.35 and P51,216.30 which were not verified by SGV & Co.

As regards the input taxes of P5,834,404.35, petitioner in its memorandum explained that the same pertained to its purchases of services from Genials Trading, the corresponding official receipts of which could no longer be secured from the latter since the said documents were destroyed by termites. In lieu of the official receipts, petitioner presented before this Court the unregistered invoices *(i.e., without BIR permit to print)* issued by Genials Trading.[13]

Petitioner's allegation that the official receipts can no longer be produced in court to substantiate its claim as it were destroyed by termites and cannot consequently be obtained from Genials Tradings absolutely has no leg to stand on. Petitioner should have, at the onset, demanded for the issuance of the said receipts at the time it made its payments to Genials Trading.

The law and regulations require that the input VAT on purchases of services be substantiated by VAT official receipts. The presentation of the VAT official receipts presupposes that the claimed input VAT was actually remitted to the Bureau of Internal Revenue.

The same holds true with the input taxes of P51,216.30 related to petitioner's importations. Without the corresponding Bureau of Customs ("BOC") official receipt, import entry or any document proving payment of VAT to the BOC. such amount cannot be considered as valid input tax credits.

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[13] Exhibits "FFF" to "ZZZ", "AAAA" to "ZZZZ", "AAAAA" to "ZZZZZ", "AAAAAA" to "GGGGGG".

C. QUARTERLY VAT PAYMENTS

Petitioner's machine validated Monthly Value-Added Tax Declaration for the month of July 2000[14] proved that it actually paid an output VAT amount of P82,553.39 for the said month.

D. CREDITABLE VAT WITHHELD

Records reveal that out of the reported total creditable VAT withheld of P22,592,486.06, only the amount of P13,912,609.46 is duly supported by withholding tax certificates, as follows:

Exhibit	Period Involved	Income Payment	VAT Withheld
U	1/1/00-1/31/00	P 24,082,694.56	P 2,047,029.03
BB	2/1/00-2/29/00	11,633,393.22	988,838.43
CC	2/1/00-2/29/00	2,579,698.99	219,274.42
DD	2/2/00-2/29/00	18,965,612.58	1,612,077.06
SS	3/1/00-3/31/00	1,418,074.65	120,536.35
TT	3/1/00-3/31/00	11,079,621.76	941,767.85
EE	3/1/00-3/31/-00	6,321,870.86	537,359.02
	Subtotal	**P 76,080,966.62**	**P 6,466,882.16**
V	4/1/00-4/30/00	**P 25,287,483.44**	**P 2,149,436.08**
W	10/1/00-10/31/00	P 15,236,699.20	P 914,201.95
X	11/1/00-11/30/00	15,236,699.20	914,201.95
Y	12/1/00-12/31/00	40,798,674.36	3,467,887.32
	Subtotal	**P 71,272,072.76**	**P 5,296,291.22**
	Total	**P172,640,522.82**	**P13,912,609.46**

After applying petitioner's valid input tax credits, quarterly VAT payment and creditable VAT withheld against its output VAT liability for the four quarters of 2000, there is no excess creditable VAT withheld which may be the proper subject of a claim for refund of erroneously paid tax under Section 204 (C) of the NIRC of 1997, as shown below:

[14] Exhibit "O".

Taxable Receipts	P 280,288,348.47
Output Tax	P 28,028,834.85
Less: Substantiated Input Tax	1,488,941.95
VAT Payable (Excess Input Tax)	P 26,539,892.90
Less: Tax Credits/Payments	
Quarterly Payments	P 82,553.39
Creditable VAT Withheld	13,912,609.46
Total Tax Credits/Payments	P 13,995,162.85
Tax Payable	P 12,544,730.05

Thus, petitioner's claim must fail. Well-settled is the rule that the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[15]

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[15] Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459, (1997) citing Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, (1995).

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.
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.

ERNESTO D. ACOSTA
Presiding Justice