REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE TONAN CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4892

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :
NOV 06 1995

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DECISION

This involves a claim for refund/tax credit in the total amount of P2,236,422.00 allegedly representing accumulated refundable input value added tax (VAT) for the period October 7, 1989 to September 5, 1991 of Philippine Tonan Corporation.

As alleged in its Petition for Review, petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is an EPZA-registered enterprise, engaged in the manufacture and sale of water supply hardware and household and kitchen equipment with address at Mactan Export Processing Zone, Lapu-Lapu City. It is likewise, a VAT-registered exporter of goods and a holder of VAT Registration Certificate No. 59-4-001285.

For the period from October 7, 1989 to September 5, 1991, petitioner allegedly paid Primary Structures Corporation (PSC) for services rendered in the supply of labor and materials, of petitioner's factory and office complex. Because of these payments to PSC, which is also a VAT-registered supplier of construction services, petitioner stated that it accumulated a refundable input value added tax in the total amount of P2,236,422.00.

Hence, on November 6, 1991, petitioner filed with the Bureau of Internal Revenue an application for tax credit and/or refund of value added tax paid. As the Bureau has not approved neither denied its application on December 23, 1992 petitioner filed with this Court a petition for review of aforesaid claim for refund.

In his answer, respondent alleged, among others, the following special and affirmative defences, to wit:

> 1. Petitioner's claim for refund is still under administrative investigation;
>
> 2. The mere allegation of refundability does not *ipso facto* merit a refund of taxes paid and collected;
>
> 3. It is incumbent upon the petitioner to prove that he has complied with the provisions of Section 204 (3) and 230 both of the Tax Code, as amended; and
>
> 4. Assuming *arguendo* there has been compliance with the above provision of the Tax Code, petitioner's claim for refund has prescribed. Section 230 of the Tax Code, as amended, expressly provides for a two year

mandatory period within which to file a claim for refund, thus:

> "In any case, no suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; provided, xxx."

Issues having been joined, this Court set the case for trial on the merits. In the initial hearings of the case, petitioner presented various documents and requested that the same be marked as its documentary evidence. The documents which were marked as Exhs. "A" to "CC", were VAT returns which petitioner allegedly filed with the respondent on November 20, 1991, as well as numerous receipts apparently issued by PSC covering payments on its construction services rendered to petitioner for the period from October 7, 1989 to September 5, 1991 (CTA records, pp. 83-119). Other documents presented as evidence were petitioner's Certificates of Registration as EPZA registered enterprise (Exh. "DD") and as VAT registered taxpayer (Exh. "EE"). Letter filed with respondent requesting refund of the total amount of P2,236,422.00 was also presented and marked as Exh. "FF". The rest of petitioner's documentary evidence were the schedule of payments to PSC (Exh. "GG"), application for tax credit/refund of VAT paid (Exh. "FF-2"), and certifications issued by Citibank and Prudential Bank relative to foreign remittances of proceeds on export sales made by petitioner (Exhs. "HH" and "II", respectively).

As for its testimonial evidence, petitioner presented only one (1) witness in the person of Ms. Ligaya Tinapay, for the purpose of "proving that petitioner has a refundable input value added tax for the period 1989 to 1991 and also to identify documents relevant to the claim for refund" (T.S.N. November 9, 1993, pp. 2-3).

On the part of respondent, no documentary, neither testimonial evidence was presented. Counsel for respondent, Atty. Segui, merely submitted her case based on the pleadings and the records (presumably, BIR records), which she promised to submit at a later date (Minutes of CTA hearing held on September 19, 1994, p. 125, CTA records). Unfortunately, however, for reasons unknown to the Court, said BIR records have become part of forgotten lore. For up to the time the case was submitted for decision, no such BIR records were submitted by respondent's counsel. At any rate, just like petitioner's counsel who submitted a memorandum to support his case, respondent's counsel, at least, filed her own memorandum.

The vital issues needing ventilation in this case are the following:

1. Whether or not petitioner's claim has prescribed; and

2. Whether or not petitioner is entitled to a refund or tax credit of its VAT input taxes paid on its domestic purchases of taxable services rendered in the construction of its factory and office complex.

The issue on prescription was raised by respondent in his Answer, when he alleged under paragraph 8 thereof that:

> "Assuming arguendo, there has been compliance with the above provision of the Tax Code, petitioner's claim for refund has prescribed. Section 230 of the Tax Code, as amended, expressly provides for a two-year mandatory period within which to file a claim for refund, thus:
>
> > 'In any case, no suit or proceeding shall be begun after the expiration of two years from the date of the tax or penalty regardless of any supervening cause that may arise after payment; provided, xxx.'

From the above, respondent maintains that the two-year prescriptive period of the instant case, should be counted from the dates of payment of the input taxes, as mandated by Section 230 of the Tax Code.

The Court begs to disagree. The proper law that should apply is Section 106(c) of the Tax Code, considering that the input taxes being claimed as refundable or tax creditable were from acquisition of capital goods, and not from input taxes attributable to the goods exported, which was also wrongfully used by petitioner as basis of its claim. Precisely, this was the point emphasized by Atty. Trebiana, counsel for respondent, when he conducted the cross-examination of petitioner's witness, Ms. Ligaya Tinapay. Thus:

"Q. At any rate, the tax sought to be refunded is a VAT input tax, right?

A. Yes.

Q. The VAT input tax was incurred when the corporation Philippine Tonan contracted the contractor for the construction of EPZA of office premises and factory, right?

A. Upon payment of the bills.

Q. No. My Question is the contract was for the construction of factory premises and office building?

A. Yes.

Q. So that is a capital good? The buildings ...

A. But we are only liable for the services. We exempt for our-raw materials and supplies in our production for the services we are liable for the 10% VAT.

Q. My question is the building, the office building, the factory building are capital goods, right? Capital assets?

A. Yes.

Q. So in acquisition of capital goods, so the input tax being claimed is from the acquisition of the capital goods?

A. Yes.

Q. May I read to you the provision of Revenue Regulation No. 5-87 ...

(T.S.N. Hearing, March 25, 1994, pp. 14-15) (Underscoring supplied)

With the above admission by petitioner's witness that the input taxes were indeed from acquisition of capital assets, the pertinent provision of Section 106(c) should categorically apply. It states:

"Section 106. *Refunds or tax credits of input tax.*

(a) Export Sales. - xxx

(b) Zero-rated or effectively zero-rated sales - xxx

(c) Capital Goods - xxx The application for refund may be made only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made:

Provided, That a VAT registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: Provided, however, That the application is filed not later than two (2) years from the dates herein prescribed. xxx" (Underscoring supplied)

A careful consideration of the above-stated provision reveals, that in claiming a refund/tax credit of input taxes arising from acquisition of <u>capital goods,</u> the two-year prescriptive period should be reckoned from the <u>expiration</u> of the two succeeding quarters <u>after</u> any of the following quarters, whichever is applicable, namely:

> (1) the quarter in which the <u>importation</u> was made;
>
> (2) the quarter in which the <u>local purchase</u> was made; and
>
> (3) in case the <u>business has just commenced,</u> application for refund must be made <u>only after</u> the lapse of 180 days, which period is also equivalent to 2 quarters, from the <u>date of VAT registration</u> or actual <u>start of business operations,</u> whichever <u>comes later.</u>

The instant case is covered by situation number 2 as stated above, since it involves local purchases of services for the construction of capital assets. Hence, the two-year prescriptive period should be counted from the lapse of the two quarters following the quarter in which the purchase was made. Details of the receipts of aforesaid purchases are hereinbelow tabulated, for a clearer determination whether or not the payments have already prescribed. They are:

Marked as Petitioner's Exhibits	Official Receipt No.	Date	*Amount
"U" to "U-4" inclusive	094	10-07-89	P 2,733,000.00
"V" to "V-4" inclusive	283	11-17-89	911,000.00
"W" to "W-4" inclusive	287	12-15-89	911,000.00
"CC" to "CC-5" inclusive	296	01-24-90	911,000.00
"BB" to "BB-5" inclusive	297	01-24-90	1,115,053.00
"X" to "X-5" inclusive	152	02-19-90	911,000.00
"Y" to "Y-5" inclusive	153	02-19-90	1,115,753.00
"Z" to "Z-5" inclusive	164	03-30-90	911,000.00
"AA" to "AA-5" inclusive	165	03-30-90	1,115,753.00
"P" to "P-4" inclusive	166	04-20-90	847,230.00
"Q" to "Q-4" inclusive	181	07-03-90	488,770.00
"R" to "R-4" inclusive	187	07-23-90	563,000.00
"S" to "S-4" inclusive	207	10-01-90	1,493,000.00
"T" to "T-4" inclusive	237	12-17-90	611,074.80
"J" to "J-5" inclusive	241	01-04-91	836,916.00
"K" to "K-5" inclusive	302	03-12-91	2,400,000.00
"L" to "L-5" inclusive	314	05-04-91	960,000.00
"M" to "M-5" inclusive	327	06-25-91	2,000,000.00
"N" to "N-5" inclusive	338	07-31-91	1,765,[illegible].40
"O" to "O-4" inclusive	[illegible]	09-05-91	[illegible]
	Total Payments to PSC		P24,600,642.20
			11
	VAT Deemed Paid		P 2,236,422.00

The first quarter of payments covered those made on October 7, 1989, November 17, 1989 and December 15, 1989. Two succeeding quarters from this group of payments would be from January 1, 1990 to June 30, 1990. During these two quarters, petitioner is prohibited from filing its application for refund or tax credit. Petitioner therefore, could file its application for refund only anytime from July 1, 1990, date from where the counting of the two-year prescriptive period should start, up to

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*Includes 1% Expanded Withholding Tax.

June 30, 1992, end of the period. In the case at bar, petitioner filed its claim with the B.I.R. on November 6, 1991, which was well within the period allowed by law for this quarter of payments. However, it filed its claim with this Court only on December 23, 1992, which was way beyond June 30, 1992. Payments, therefore, made for the year 1989 are already barred by prescription. The last proviso of Section 106(c) requires that the filing of the application should be done not later than 2 years from the dates herein prescribed. The word "application" was interpreted by this Court as to refer not only to application in the administrative level, but also to filing of the claim in the judicial level. Our reason is Section 106(c) is silent on this matter and besides, the application for refund merely begins in the administrative level, for if it remains unacted upon by the BIR, or if acted upon but adverse to the taxpayer, the said claim necessarily ends up with this Court. Another important phrase to be interpreted in this provision is "from the dates herein prescribed." We interpret the word "dates" as referring to the two quarters following the three (3) periods of time mentioned hereinbefore. The word "herein prescribed" mean what is provided in the early part of Section 106(c).

The last portion of Section 106(c), as interpreted by the Court, simply states that the filing of the claim for refund or tax credit of input taxes imposed on capital assets should be filed administratively and judicially within two years after the lapse of two quarters following any of these periods of time, to wit:

(1) quarter in which the importation was made;

(2) quarter in which the local purchase was made; and

(3) if business has just commenced, application must be filed after the lapse of 180 days from the date of VAT registration, or actual start of business operations, whichever comes later.

The second batch of payments cover receipts dated January 24, 1990 to March 30, 1990. Two quarters prohibiting petitioner from filing its claim would be from April 1, 1990 to September 30, 1990. Hence, the two-year prescriptive period would start from <u>October 1, 1990</u> and end on <u>September 30, 1992</u>. For this batch, administrative claim was rightfully filed on <u>November 6, 1991</u> as this was after October 1, 1990. Judicial claim, however, was filed only on <u>December 23, 1992</u>, which was beyond September 30, 1992, the deadline of the two-year prescriptive period. Therefore, the payments made during the first quarter of 1990 also prescribed.

There was only one payment done for the second quarter of 1990. This was covered by Official Receipt No. 166 dated April 20, 1990. Six months preventing petitioner from filing its claim would be from July 1, 1990 to December 31, 1990. Thus, the two-year prescriptive period would begin from January 1, 1991 and end on December 31, 1992. Filing of claim with the B.I.R. was on November 6, 1991. Petition for Review was filed with this Court on December 23, 1992. Both the administrative and judicial claims, therefore, were accomplished within the two-year period allowed by Section 106(c) of the Tax Code. Thus, the lone payment made on April 20, 1990 did not prescribe.

On account that the rest of the receipts, subject of this case, bear dates much later than April 20, 1990, which payment has just been found as not having prescribed, it is undoubtedly safe to conclude that all the said receipts did not also prescribe.

Summing up the issue on prescription, only receipts dated October 7, 1989 up to March 30, 1990 have been barred by prescription. This finding controverts respondent's allegation that "petitioner's purchase of services covering the period from October 7, 1989 to December 17, 1990 had already prescribed (par. 3, p. 5, Respondent's Memorandum; p. 148, CTA records).

Obviously, the discrepancy arose due to respondent's application of Section 230, instead of Section 106(c) of the Tax Code. It is the Court's firm belief that the latter provision is the proper applicable law.

As regards the second issue, petitioner argues that being an exporter, it is subject to zero rate of VAT. Petitioner has wrongfully anchored its claim on Section 106(a) of the Tax Code. As We have just stated, the proper law applicable to this case is Section 106(c), which speaks of refunds or tax credits of input taxes on capital goods. We will resolve this issue in the light of the first part of the law which reads:

> "Section 106. *Refunds or tax credits of input tax.* - (a) Export Sales. - xxx
>
> (b) xxx
>
> (c) 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, <u>to the extent that such input taxes have not been applied against output taxes</u>. xxx" (Underscoring supplied)

From the above-quoted provision petitioner, as a claimant, must be able to prove that the input taxes have not been applied against output taxes. Unluckily, however, for petitioner despite the <u>amendment</u> of all its VAT returns which were all filed on <u>November 20, 1991</u> or just 16 days after it filed its written claim with the

B.I.R. on November 6, 1991, petitioner still miserably failed to show this mandatory proof that its input taxes have not been applied against output taxes. For what has been evidently shown in its VAT return for the third quarter of 1991 (Exhibit "I" Petitioner; p. 91, CTA records), was that the amount of P2,331,872.66, which was denominated as net creditable input tax was also recorded therein as balance carried to succeeding quarter. In the same return, there was no amount indicated opposite the particulars "tax credit certificate applied for" or "refunds applied for." Thus, when petitioner filed its VAT return for the third quarter of 1991, the declarations stated therein created the impression that it chose the option of applying its accumulated input taxes to its VAT output taxes in the succeeding quarter. This fact or impression remains, as there was no proof to the contrary ever presented. Consequently, although only a portion of petitioner's claim has prescribed, the unprescribed part cannot still be granted as the same had already been applied against output taxes. The Court cannot presume that in the fourth quarter of 1991, petitioner did not again realize local sales and therefore, there were no output taxes against which input taxes may be applied. As borne by the records of the case, petitioner failed to present evidence, either testimonial or documentary, to this effect. As a finale, let it be emphasized that

> "Tax refund partakes of the nature of a tax exemption and therefore, cannot be allowed unless granted in the most explicit and categorical language. The grant of refund privileges must be strictly construed against the taxpayer." (Insular Lumber Co. vs. CTA, 104 SCRA 710; CIR vs. Rio Tuba Nickel Mining Corp., 207 SCRA 549)

WHEREFORE, in view of the foregoing, the petition is hereby **DENIED**. Costs against the petitioner.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals