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

**TOSHIBA INFORMATION EQUIPMENT (PHILS.) INC.,**
**Petitioner,**

**- versus -**

**C.T.A. CASE NO. 5762**

**COMMISSIONER OF INTERNAL REVENUE,**
**Respondent.**

**Promulgated:**
OCT 16 2000

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# DECISION

This case involves a claim for refund/tax credit in the amount of P3,875,139.65 allegedly representing unutilized input VAT paid by Petitioner on its purchases of taxable goods and services for the period January 1 to June 30, 1997.

Petitioner is a domestic corporation duly registered with the Philippine Economic Zone Authority (PEZA) as an ecozone export enterprise (Exh. A). It is principally engaged in the business of manufacturing and exporting of electric machinery, equipment, systems, accessories, parts, components, materials and goods of all kinds, including those relating to office automation and information technology and all types of computer hardware and software, such as, but not limited to HDD-CD-ROM and personal computer printed circuit board (par. 6, Joint Stipulation of Facts and Issues).

Petitioner is a VAT registered entity and is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code, as amended (pars. 1, 2 & 7, Stipulation of Facts and Issues).

On April 14, 1997 and July 21, 1997, Petitioner filed with the Bureau of Internal Revenue its quarterly VAT returns for the first and second quarters of 1997, respectively, declaring input VAT payments on its domestic purchases of taxable goods and services in the aggregate sum of P3,875,139.65, broken down as follows:

| | | | INPUT VAT | | |
|---|---|---|---|---|---|
| Exh. | 1997 | Zero rated Sales | Carried over from previous quarter | On domestic Purchases this quarter | Total |
| B | 1st qtr. | | P33,393,306.42 | P3,320,034.44 | P36,713,340.86 |
| C | 2nd qtr. | | 36,713,340.86 | 555,105.21 | 37,268,446.07 |
| | | | P 3,875,139.65 | | |

Subsequently, on July 23, 1997, Petitioner filed with the BIR its amended quarterly returns for the first and second quarters of 1997 declaring total zero-rated sales amounting to P7,474,677,000.00:

| | | | INPUT VAT | | |
|---|---|---|---|---|---|
| Exh. | 1997 | Zero rated Sales | Carried over from previous quarter | On domestic Purchases this quarter | Total |
| B-1 | 1st qtr. | P2,083,305,000.00 | P33,393,306.42 | P3,320,034.44 | P36,713,340.86 |
| C-1 | 2nd qtr. | 5,411,372,000.00 | 36,713,340.86 | 555,105.21 | 37,268,446.07 |
| | | P7,494,677,000.00 | P 3,875,139.65 | | |

Pursuant to BIR Audit Memorandum Order No. 2-93, Petitioner filed on March 30, 1999 with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (CENTER-DOF), two separate applications for tax credit of input taxes paid for the first two quarters of 1997 (par. 4, Joint Stipulation of Facts and Issues).

The instant petition for review was filed on March 31, 1999, well within the two-year period prescribed by then Section 230 of the Tax Code (par. 8, Joint Stipulation of Facts and Issues).

Petitioner submitted voluminous documents to support its claim and witnesses to identify the same. Respondent, on the other hand, in answer to the petition, states:

> 1) Petitioner's alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 2) Petitioner failed miserably to show that the total amount of P3,875,139.65, claimed as VAT input taxes, were erroneously or illegally collected, or that the same are properly documented;
>
> 3) Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 4) In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
>
> 5) 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; and
>
> 6) Well-established is the rule that claims for refund/tax credit are construed in strictissimi juris against the taxpayer as it partakes of exemption from tax.

However, Respondent submitted the case for decision without presenting any evidence. And both parties opted not to present their respective memorandum.

There is no quarrel that Petitioner is subject to zero percent VAT on its export sales based on Section 100(a)(2)(A)(i) of the Tax Code, as amended, as Respondent already admitted the same. Said section of the Code, provides, to wit:

> **Sec. 100.** ***Value-added tax on sale of goods or properties.*** - *(a) Rate and base of tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> x x x x x x x x x
>
> (2) The following sales by VAT-registered persons shall be subject to 0%:
>
> (A) Export sales. - The term `export sales' means:
>
> (i) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods and services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

Furthermore, Petitioner proved that indeed its export sales of P7,494,677,000.00 for the first two quarters of 1997 qualify as zero-rated as it established that:

> a) it is a duly VAT registered PEZA export enterprise;
>
> b) it actually generated export sales amounting to P7,494,677,000.00 for the first two quarters of 1997 (see Sales & Collection Summary, commercial export invoices - Exhs. N-1 to N-3, O-1 to O-30, Q-1 to Q-115 and R-1 to R-776, inclusive); and
>
> c) the foreign proceeds of its export sales of P7,494,677,000.00 were inwardly remitted and accounted for in accordance with the BSP rules and regulations (see Sales and Summary Collection, bank credit advices and Petitioner's passbook - Exhs. N-1 to N-3, O-1 to O-30, P-1 to P-45, inclusive).

Considering therefore, that Petitioner's sales qualify as zero-rated sales, it is not liable to pay output tax on such sales. Undoubtedly, it can claim tax credit or refund of input VAT paid on its purchases of goods, properties or services relative to such zero-rated sales in accordance with Section 4.102-2 of Revenue Regulations No. 7-95 and Section 106(a) of the Tax Code, as amended, hereunder quoted, *viz*:

> **Section 4.102-2.** ***Zero-Rating.*** - (a) *In general.* - A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.
>
> x x x x x x x x x
>
> **Section 106.** ***Refunds or tax credits of creditable input tax.*** - (a) 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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 attributable to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Thus, what is left for Our resolution are the following issues which the Petitioner and Respondent have jointly stipulated:

> (I) Whether or not Petitioner has incurred input taxes in the amount of P3,875,139.65 for the period January 1 to June 30, 1997 which are directly attributable to its export sales;
>
> (II) Whether or not the input taxes incurred by Petitioner for the period January 1 to June 30, 1997 have not been carried over to the succeeding quarters;

(III) Whether or not input taxes incurred by Petitioner for the first two quarters of 1997 have not been offset against any output tax; and

(IV) Whether or not input taxes incurred by Petitioner for the first two quarters of 1997 are properly substantiated by official receipts and invoices.

After an exhaustive review of the evidence presented as well as the applicable laws, rules, regulations and jurisprudence, We grant Petitioner's claim but in a reduced amount.

Petitioner's amended quarterly VAT returns for 1997 showed that it had no VAT taxable sales but only zero-rated export sales in the sum of P2,083,305,000.00 for the first quarter and P5,411,372,000.00 for the second quarter. That being the case, all input taxes incurred by Petitioner for the said two quarters of 1997 were directly attributable to its zero-rated sales for the involved period. In the case of **Babcock-Hitachi (Phils.), Inc. vs. Commissioner of Internal Revenue and the Court of Tax Appeals, CA-G.R. SP No. 40703, November 21, 1996,** it was ruled that "where Petitioner exports 100% of its products, thus, engaged in purely zero-rated sales, all input taxes incurred on its purchases of goods and services and on capital goods imported or locally purchased are all considered directly attributable to its zero-rated sales". Hence, it appears that for the first two quarters of 1997, Petitioner incurred input taxes directly attributable to its export sales.

Anent the issues of carry-over and offsetting, although Petitioner's claimed input taxes were not applied against any output VAT during the first two quarters of 1997, they were carried over to Petitioner's subsequent quarterly VAT returns and were offset against its VAT output liability of P15,736.42 for the fourth quarter of 1998 (Exh. G).

Nevertheless, even if such input taxes of P3,875,139.65 for the first two quarters of 1997 were carried over to the succeeding quarters up to the first quarter of 1999 (Exhs. D to H, inclusive), Petitioner deducted the same as "VAT Refund/TCC Claimed" (Exh. H-1) from its total available input taxes of P6,841,468.17 declared in 1999 first quarter VAT return (Exh. H-1). There remained a net creditable input tax of P2,966,328.52 which actually pertains to Petitioner's creditable input taxes for the third quarter of 1997 to the first quarter of 1999 before the deduction of its 1999 first quarter output VAT liability of P25,219.99. In other words, despite the carry over of the subject input taxes of P3,875,139.65, Petitioner's claim is not affected because the said amount was deducted from Petitioner's total available input taxes in 1999.

Notwithstanding the foregoing, still, We cannot allow the total amount of input taxes claimed because as evidenced by the records in this case, not all of the claimed input taxes of P3,875,139.65 were actually incurred by Petitioner. Nor were they duly substantiated by invoices and official receipts.

Granting that the amount of P3,875,139.65 being claimed in the instant petition tallies with the total input taxes declared in Petitioner's amended 1997 first and second quarterly VAT returns, nonetheless, said amount is higher by P189,692.92 than what have been claimed administratively by Petitioner with the DOF One Stop Inter-Agency Tax Credit and Duty Drawback Center (see Annexes D, D-1 E and E-1, Petition for Review). Accordingly, Petitioner cannot judicially claim beyond the amount of P3,685,446.23 which was filed in the administrative level. Then Section 230 of the Tax Code clearly mandates:

> **SEC. 230.** *Recovery of tax erroneously of illegally collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to

> have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such 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, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Moreover, the Summaries of Input VAT for the first and second quarters of 1997 submitted by Petitioner for verification by the commissioned audit firm, SGV & Co., and offered as evidence before this Court (Exhs. J-1 to J-4; K-1 to K-3) reflected only a total amount of P3,685,446.73 input taxes. SGV & Co. certified in its report (Exh. I), that out of the total input taxes of P3,685,446.73, the amount of P396,882.58 was not properly substantiated. The reasons being that they involved transactions which were only supported by provisional acknowledgment receipts or by documents other than official receipts, or were not supported by TIN or TIN VAT or by any document at all (see TSN, September 27, 1999, pp. 12 & 13).

It is noteworthy that a further verification by this Court on the said SGV report, together with Petitioner's Summaries of Input VAT (Exhs. J-1 to J-4; K-1 to K-3) and supplier's invoices and official receipts (Exhs. L-1 to L-72; M-1 to M-396) for the first and second quarters of 1997, revealed that in addition to the exceptions noted by SGV & Co. of P396,882.58, the amount of P1,887,545.65 detailed per Annex A failed to meet the substantiation requirements provided for under Section 4.104-5 of Revenue Regulations No. 7-95 in relation with Sections 108 and 238 of the then Tax Code.

Also, as We earlier discussed, Petitioner carried over the subject input taxes to the succeeding quarters and in fact offset it against its output VAT liability of P15,736.42 for the fourth quarter of 1998. The net creditable input tax of P6,601,677.32 (before deduction of the P15,736.42 output VAT) shown in Petitioner's 1998 fourth quarter VAT return corresponds to the declared input taxes of herein Petitioner for the first quarter of 1997 up to the fourth quarter of 1998. Applying the first-in first-out concept, the amount that was credited to pay the output VAT of P15,736.42 came from the claimed input taxes for the first quarter of 1997, whereby resulting to an excess unutilized input tax of P6,585,940.90 (P6,601,677.32 less P15,736.42).

In sum, aside from the input taxes of P2,284,428.23 (the sum of P396,882.58 and P1,887,545.65) which were not properly substantiated by VAT invoices and official receipts, the amount of P15,736.42 which was applied against Petitioner's 1998 fourth quarter output VAT liability should be additionally deducted from Petitioner's input taxes of P3,685,446.73.

**WHEREFORE**, Petitioner's claim for refund of unutilized input VAT payments is hereby **GRANTED** but in a reduced amount of P1,385,282.08 computed as follows:

| | 1st Quarter | 2nd Quarter | Total |
|---|---|---|---|
| Amount of claimed input taxes filed with the DOF One Stop Shop Center | P3,268,682.34 | P416,764.39 | P3,685,446.73 |
| Less: 1) Input taxes not properly supported by VAT invoices and official receipts | | | |
| a. Per SGV's verification (Exh. I) | P 242,491.45 | P154,391.13 | P 396,882.58 |
| b. Per this Court's further verification (Annex A) | 1,852,437.65 | 35,108.00 | 1,887,545.65 |
| 2) 1998 4th qtr. Output VAT liability applied against the claimed input taxes | 15,736.42 | | 15,736.42 |
| Subtotal | P2,110,665.52 | P189,499.13 | P2,300,164.65 |
| Amount Refundable | P1,158,016.82 | P227,265.26 | P1,385,282.08 |

Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** to the Petitioner or in the alternative, ISSUE a TAX CREDIT CERTIFICATE in the amount of P1,385,282.08 representing unutilized input taxes paid by the Petitioner on its purchases of taxable goods and services for the period January 1 to June 30, 1997.

**SO ORDERED.**

**AMANCIO Q. SAGA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**RAMON O. DE VEYRA**
Associate Judge

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Presiding Judge

**TOSHIBA INFORMATION EQUIPMENT (PHILS.) INC.**
**- vs. - COMMISSIONER OF INTERNAL REVENUE**
**CTA CASE NO. 5762**
**SCHEDULE OF ADDITIONAL DISALLOWANCES ON**
**CLAIMED UNUTILIZED INPUT VAT PAYMENTS**
**FOR THE FIRST TWO QUARTERS ENDING JUNE 30, 1997**
**PER THIS COURT'S VERIFICATION**

| SUPPLIER | Per Summary Exh. | Page No. | Purchases | Disallowed Input Tax 1st Qtr. | 2nd Qtr. | Total |
|---|---|---|---|---|---|---|
| 1.) Without vat invoices &/or official receipts | | | | | | |
| EL NOR MARKETING | J-1 | 1 | P 13,522.80 | P 1,352.28 | P | P 1,352.28 |
| GLOBE TELECOM | J-1 | 1 | 4,811.00 | 481.10 | | 481.10 |
| INFOSTRUCTURE SYSTEM | J-1 | 1 | 9,691.20 | 969.12 | | 969.12 |
| INFOSTRUCTURE SYSTEM | J-1 | 1 | 31,670.30 | 3,167.03 | | 3,167.03 |
| INFOSTRUCTURE SYSTEM | J-1 | 1 | 16,405.00 | 1,640.50 | | 1,640.50 |
| INFOSTRUCTURE SYSTEM | J-1 | 1 | 13,670.00 | 1,367.00 | | 1,367.00 |
| ISLA COMMUNICATIONS | J-1 | 1 | 545.70 | 54.57 | | 54.57 |
| K-LINE AIR SERVICE | J-2 | 2 | 10,904.80 | 1,090.48 | | 1,090.48 |
| K-LINE AIR SERVICE | J-2 | 2 | 1,014.30 | 101.43 | | 101.43 |
| LEP INTERNATIONAL PHILS. | J-2 | 2 | 7,882.30 | 788.23 | | 788.23 |
| LEP INTERNATIONAL PHILS. | J-2 | 2 | 30,550.20 | 3,055.02 | | 3,055.02 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,460.00 | 146.00 | | 146.00 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,664.35 | 166.44 | | 166.44 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,460.00 | 146.00 | | 146.00 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,460.00 | 146.00 | | 146.00 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,502.45 | 150.25 | | 150.25 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,460.00 | 146.00 | | 146.00 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,460.00 | 146.00 | | 146.00 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,460.00 | 146.00 | | 146.00 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,460.00 | 146.00 | | 146.00 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,485.85 | 148.59 | | 148.59 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,497.15 | 149.72 | | 149.72 |
| LIBERTY BROADCASTING | J-2 | 2 | 1,460.00 | 146.00 | | 146.00 |
| NIPPON EXPRESS PHILS. | J-2 | 2 | 70,101.20 | 7,010.12 | | 7,010.12 |
| NIPPON EXPRESS PHILS. | J-2 | 2 | 174,932.90 | 17,493.29 | | 17,493.29 |
| NIPPON EXPRESS PHILS. | J-2 | 2 | 268,006.40 | 26,800.64 | | 26,800.64 |
| NIPPON EXPRESS PHILS. | J-2 | 2 | 246,172.30 | 24,617.23 | | 24,617.23 |
| ONE-TEN GEN. MERCHANDISE | J-2 | 2 | 3,714.50 | 371.45 | | 371.45 |
| PILIPINO TELEPHONE CORP. | J-3 | 3 | 3,487.20 | 348.72 | | 348.72 |
| REPUBLIC COURIER SERVICE | J-3 | 3 | 10,736.40 | 1,073.64 | | 1,073.64 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 506,650.00 | 50,665.00 | | 50,665.00 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 26,880.00 | 2,688.00 | | 2,688.00 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 52,391.80 | 5,239.00 | | 5,239.00 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 124,182.70 | 12,418.27 | | 12,418.27 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 165,646.00 | 16,564.60 | | 16,564.60 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 1,462,771.82 | 146,277.20 | | 146,277.20 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 14,330,000.00 | 1,433,000.00 | | 1,433,000.00 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 802,679.88 | 80,267.99 | | 80,267.99 |
| TOSPLANT PHILIPPINES | J-3 | 3 | 9,046.70 | 904.67 | | 904.67 |
| YUSEN AIR & SEA PHILS., INC. | J-4 | 4 | 35,125.70 | 3,512.57 | | 3,512.57 |
| YUSEN AIR & SEA PHILS., INC. | J-4 | 4 | 44,177.60 | 4,417.76 | | 4,417.76 |
| YUSEN AIR & SEA PHILS., INC. | J-4 | 4 | 29,177.60 | 2,917.76 | | 2,917.76 |
| FIRST LEPANTO | K-1 | 1 | 175,318.00 | | 17,531.80 | 17,531.80 |
| GUTHRIE-GENSEN | K-1 | 1 | 5,550.00 | | 555.00 | 555.00 |
| ISLA COMMUNICATION | K-2 | 2 | 443.20 | | 44.32 | 44.32 |
| K-LINE AIR SERVICE | K-2 | 2 | 10,207.90 | | 1,020.79 | 1,020.79 |
| NIPPON EXPRESS PHILS. | K-2 | 2 | 30,757.20 | | 3,075.72 | 3,075.72 |
| PILIPINAS SHELL | K-2 | 2 | 6,420.50 | | 642.05 | 642.05 |
| PILIPINAS SHELL | K-2 | 2 | 40,287.00 | | 4,028.70 | 4,028.70 |
| PILIPINAS SHELL | K-2 | 2 | 32,486.00 | | 3,248.60 | 3,248.60 |

**TOSHIBA INFORMATION EQUIPMENT (PHILS.) INC.**
**- vs. - COMMISSIONER OF INTERNAL REVENUE**
**CTA CASE NO. 5762**
**SCHEDULE OF ADDITIONAL DISALLOWANCES ON**
**CLAIMED UNUTILIZED INPUT VAT PAYMENTS**
**FOR THE FIRST TWO QUARTERS ENDING JUNE 30, 1997**
**PER THIS COURT'S VERIFICATION**

| SUPPLIER | Per Summary | | Purchases | Disallowed Input Tax | | |
|---|---|---|---|---|---|---|
| | Exh. | Page No. | | 1st Qtr. | 2nd Qtr. | Total |
| YUSEN AIR & SEA PHILS., INC. | K-3 | 3 | 9,259.70 | | 925.97 | 925.97 |
| YUSEN AIR & SEA PHILS., INC. | K-3 | 3 | 17,417.00 | | 1,741.70 | 1,741.70 |
| YUSEN AIR & SEA PHILS., INC. | K-3 | 3 | 16,863.80 | | 1,686.38 | 1,686.38 |
| YUSEN AIR & SEA PHILS., INC. | K-3 | 3 | 6,069.70 | | 606.97 | 606.97 |
| | | | **sub-total** | **P 1,852,437.65** | **P 35,108.00** | **P 1,887,545.65** |
| 2.) Without vat invoice/official receipt and supported only by a provisional receipt | | | | | | |
| PIONEER INS. & SURETY CORP. | K-2 | 2 | 474,787.00 | P | **P 47,478.70** | **P 47,478.70** |
| | | | **Total:** | **P 1,852,437.65** | **P 35,108.00** | **P 1,887,545.65** |