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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HITACHI COMPUTER PRODUCTS (ASIA) CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5676

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 24 2001

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DECISION

The present case seeks the refund or issuance of a tax credit certificate in the amount of P3,736,075.92 allegedly representing excess creditable VAT taxes paid by Petitioner on its domestic purchases of services for the period July 1, 1996 to September 30, 1996.

The antecedent facts follow.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office at Special Export Processing Zone, Laguna Technopark, Biñan, Laguna. It is engaged in the business of manufacturing, exporting, buying, selling or otherwise dealing in at wholesale electric, electronic and software products and industrial properties, including but not limited to hard disk drive and component parts, and supplies used or employed in or related to the manufacture of such products (Exhibit K). According to Petitioner, its manufactured products are sold 100% to export market.

On May 11, 1994, the Export Processing Zone Authority (EPZA) duly registered Petitioner as an Export Enterprise at the Special Export Processing Zone declared for the purpose at Laguna Technopark, pursuant to the provisions of Presidential Decree No. 66, as amended, and was issued Certificate of Registration No. 94-28. It was also registered as a value-added tax taxpayer on June 28, 1994 and was issued a certificate of registration bearing RDO Control No. 94-570-00028 (Exhibit A).

On October 7, 1994, the EPZA passed Board Resolution No. 94-212 (Exhibit L) approving the application of Petitioner for pioneer status of its small-sized, high density hard disk drive and thin film magnetic head manufacturing facility. The said resolution likewise granted a six (6) year income tax holiday to Petitioner subject to all applicable procedural guidelines under EPZA General Circular No. 90-001.

On October 25, 1996, Petitioner filed with the Bureau of Internal Revenue (BIR) its 1996 third quarterly VAT return (Exhibit C). The said return, however, was subsequently amended on October 25, 1999 (Exhibit M), showing total input VAT payments from July 1, 1996 to September 30, 1996 in the amount of P3,736,075.92. The payments were allegedly made on its domestic purchases of services totalling P37,360,759.20.

On September 28, 1998, Petitioner filed with the Tax and Revenue Group of the One-Stop-Shop Inter-Agency Tax and Credit Duty Drawback Center of the Department of Finance, an Application for Tax Credit/Refund of Value-Added Tax Paid from July 1, 1996 to September 30, 1996 in the amount of P3,736,075.92. (Exhibit D)

As the application for refund was not immediately acted upon and to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, Petitioner elevated its claim before this Court on September 30, 1998.

In his Answer filed on November 4, 1998, Respondent claimed by way of Special and Affirmative Defenses that:

"4. Granting without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

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

6. Taxes paid and collected are presumed to have been paid in accordance with law and regulation, hence, not refundable.

7. In an action for refund/credit, the taxpayer has the burden of showing that the taxes paid are erroneously collected and that failure to meet such a burden is fatal to his cause, as such claim for refund is strictly construed against the claimant. (Citibank N.A. Philippine Branch vs. The Commissioner of Internal Revenue, CTA Case No. 4258, April 1, 1994)

8. The burden of proof lies upon 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 it has complied with the provision of section 229 of the Tax Code, as amended.

10. Claims for refund are construed strictly against the claimants and cannot be allowed unless proven explicitly and categorically. (Caltex (Phil.) Inc. vs. Com. of Internal Revenue, CTA CASE No. 2871, January 29, 1986). The taxpayer has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations."

That the instant Petition was timely filed is not disputed by Respondent. Likewise, he admitted that Petitioner is both a VAT-registered entity and an EPZA-registered export enterprise. Thus, to support its claim, Petitioner invokes the provisions of Section 106(A)(2)(a)(i) in relation to Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997 (then Section 100 (a)(2)(A)(1) in relation to Section 106 (a) of the old

Tax Code) which grants zero-rated exporters of goods the privilege to apply for a refund or tax credit of its unutilized input VAT payments insofar as they are attributable to its export sales. Respondent, however, counters Petitioner's argument by invoking Section 24 of Republic Act No. 7916, otherwise known as "The Special Economic Zone Act," which provides in part:

> "**SEC. 24**. *Exemption from Taxes Under the National Internal Revenue Code.* – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the *ECOZONE.* In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the *ECOZONE* shall be remitted to the national government x x x" .

He alleges that being an ECOZONE or PEZA-registered enterprise, Petitioner is not subject to VAT under the aforementioned section of RA 7916. Consequently, it is not allowed any tax credit on VAT input tax previously paid pursuant to Section 4.103-1 of Revenue Regulations No. 7-95:

> "**SEC. 4.103-1. Exemptions.** –
>
> (A) In general. – An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid x x x." (underscoring supplied)

Through a resolution promulgated on August 2, 2000 in CTA Case No. 5650 entitled **Cebu Toyo Corporation vs. Commissioner of Internal Revenue**, this Court first passed upon the issue, thus:

> "Respondent is correct in arguing that if an entity is registered with PEZA as an ecozone enterprise and is remitting 5% of its gross income to the national government, it is exempt from payment of the VAT pursuant to the provisions of Section 24 of Republic Act No. 7916, to quote:

> "*Section 24. Exemption from Taxes Under the National Internal Revenue Code.* – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government x x x." Underlining supplied.

However, We do not agree that the aforequoted law is applicable to the case at bar. Section 23 of Republic Act No. 7916 provides:

> "*Section 23. Fiscal Incentives.* – Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, **or** those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987."

Under the aforementioned law, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, that which is provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned, which is in lieu of national and local taxes and second, as that provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 or 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However if an ecozone enterprise opted for the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax. These were explicitly elucidated by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99."

This aforequoted ruling was affirmed recently by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Seagate Technology Philippines, CA-G.R. SP No. 61189 promulgated on June 18, 2001**.

It is also important to note that the question of whether or not Petitioner is legally entitled to claim for a refund of its unutilized VAT input taxes paid had already been settled by this Court in a number of similar cases previously brought by Petitioner before Us, to wit:

1. Hitachi Computer Products (Asia) Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5651, promulgated February 2, 2001;

2. Hitachi Computer Products (Asia) Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5756, promulgated March 15, 2001; and

3. Hitachi Computer Products (Asia) Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5707, promulgated June 20, 2001.

In all of the aforementioned cases, We upheld the legality of Petitioner's claim.

We proceed, therefore, to the main issues raised in Petitioner's Pre-Trial Brief which were admitted by Respondent's counsel during the Pre-Trial Conference on February 17, 1999 and approved by this Court on June 2, 1999. These are:

> "1. Whether or not Petitioner has unapplied or unutilized creditable value-added tax inputs as of September 30, 1996 arising from its domestic purchases of goods and services which is a proper object of a claim for refund pursuant to Section 112 of the National Internal Revenue Code, as amended;
>
> 2. Whether or not the said creditable value-added tax inputs of Petitioner for the Quarter ended September 30, 1996 are substantiated by documentary evidence in the form of invoices and official receipts; and
>
> 3. Whether or not said unapplied or unutilized creditable value-added tax inputs for the Quarter ended September 30, 1996 was carried forward to the succeeding taxable Quarter and applied against any of the value-added tax output of the Petitioner for said period."

For purposes of clarity, quoted hereunder are Sections 100 (a)(2)(A)(i) and 106(a) of the 1996 Tax Code applicable to the case at bar and relied upon by Petitioner:

> "**Sec. 100.** *Value-added tax on sale of goods or properties.* -(a) x x x
>
> (2) The following sales by a VAT-registered person 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);"

"SEC. 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 attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales." (Underscoring supplied)

From the above, it is clear that a claimant is allowed to file a claim for refund or tax credit of its creditable input tax that can be directly attributed to its zero-rated sales. In the absence of a showing, therefore, that Petitioner's products were exported in its entirety, then Petitioner's claim must correspondingly be reduced.

For the period July 1, 1996 to September 30, 1996, Petitioner allegedly paid input VAT in the amount of P3,736,075.92 arising from its domestic purchases of services. On the other hand, in its amended Quarterly Value-Added Tax Return for the 3rd quarter of 1996 (Exhibit M), Petitioner declared zero-rated sales amounting to P1,707,608,362.80. Petitioner showed proofs of the inward remittances representing payments of export sales such as certifications from Rizal Commercial Banking Corporation (RCBC) and Pilipinas Bank (Exhibits H-8, R-2 & R-3) and Petitioner's passbook from RCBC (Exhibits H-5 to H-7). However, when verified by the independent CPA, only the total amount of P1,373,232,468.22 was supported by export documents such as Export Sales Invoices, Export Declarations and Airway Bills (Exhibits Q-1 to Q-392, Addendum Report of SGV- Exhibit P) The amount of P334,375,894.58 was not properly documented.

In the case of *Commissioner of Internal Revenue vs. Philippine Bobbin Corporation,* CA-G.R. SP. NO. 59452 promulgated on February 19, 2001, the Court of Appeals denied the claim for refund of Philippine Bobbin because of its failure to submit export documents and We quote:

> "By and large, export sales invoices alone are inadequate proofs that the subject goods were actually exported. Such invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (Philippine Law Dictionary, 3rd Ed., p. 495). By no means are they accurate confirmations that goods were actually shipped out of the country. Yet, that is what the law requires. Section 100(a)(2) of the *National Internal Revenue Code* (then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and 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. In that case, it is imperative for any claimant of a tax refund or credit in relation to the Input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country.
>
> Rather than limiting the documentary requirements to just the export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills, and export declarations or permits. These documents, taken collectively, are the best means to prove the exportation of goods." (Underlining supplied)

We find the above decision applicable to the case at bar since the export sales amounting to P334,375,894.58 or 19.58% of the total export sales of P1,707,608,362.80 lack export documents such as airway bills and export declarations. Since 19.58% of the alleged total export sales declared by Petitioner lack the necessary export documents, it follows then that 19.58% of the allowable input VAT of Petitioner should be disallowed for the said portion cannot be said to be directly attributable to Petitioner's zero-rated export sales.

With reference to the second issue, Petitioner substantiated its claim by submitting various VAT invoices and official receipts (Exhibits I-1 to I-226). But again, the special audit conducted by the independent CPA resulted in the disallowance of the amount of P432,803.47 because they were not properly substantiated for VAT purposes (Exhibit J - Report of SGV dated September 17, 1999). And further verification by this Court of the various invoices and official receipts also resulted to additional disallowances of the input VAT for the following reasons:

SUPPLIER	EXHIBIT	DATE	REFERENCE NO.	AMOUNT	INPUT VAT
(a) No supporting document					
CITY SERVICE CORP.				121,253.80	12,125.38
DOLPHIN ENVIRONMENTAL				8,909.10	890.91
PINPIN SECURITY				122,251.10	12,225.11
		Subtotal		**252,414.00**	**25,241.40**
(b) Not within the period of claim					
DOLPHIN ENVIRONMENTAL	I-10	6/26/96	352	37,945.45	3,794.55
DOLPHIN ENVIRONMENTAL	I-11	6/17/96	342	23,236.36	2,323.64
DOLPHIN ENVIRONMENTAL	I-12	6/21/96	345	8,909.00	891.00
DOLPHIN ENVIRONMENTAL	I-13	6/21/96	346	34,855.00	3,485.00

DOLPHIN ENVIRONMENTAL	I-14	6/26/96	351	11,636.36	1,163.64
DOLPHIN ENVIRONMENTAL	I-152	6/14/96	337	37,963.64	3,796.36
DOLPHIN ENVIRONMENTAL	I-153	6/5/96	336	42,508.87	4,250.89
DOLPHIN ENVIRONMENTAL	I-154	5/5/96	335	33,016.82	3,301.68
		Subtotal		**230,071.50**	**23,006.76**
(c) Overstatement of input VAT					
S.A.V.E. INT'L LANGUAGES INC.	I-210	9/5/96	10,658.18		
		Shld. Be	10,200.00	4,581.80	458.18
ALLKEY INT'L, INC.	I-1 to I-5	7/13/96	6,380.45		
		Shld. Be	5,360.45	10,200.00	1,020.00
		Subtotal		**14,781.80**	**1,478.18**
		Total		**497,267.30**	**49,726.34**

Therefore, out of the amount of P3,736,075.92 input taxes being refunded by Petitioner, only the amount of P3,253,546.11 was properly substantiated, detailed as follows:

Amount Claimed		P3,736,075.92
Less: Disallowances		
(a) Per SGV's verification (Exh. J)	P432,803.47	
(b) Per Court's verification	49,726.34	482,529.81
Allowable Input VAT		P3,253,546.11

Finally, anent the third issue, although Petitioner carried forward to the succeeding taxable quarter the unutilized creditable value-added tax inputs for the period July 1,1996 to September 30, 1996 as shown in the quarterly VAT return for the 4th quarter of taxable year 1996 (Exhibit N), the amount was also deducted from the total available input tax under Any VAT Refund/TCC Claimed (Exhibit N-3). Hence, the amount being claimed was not applied against any output VAT.

In sum, Petitioner has shown its entitlement to the refund sought. However, in view of the disallowances made by the independent CPA and this Court, Petitioner's claim is accordingly reduced to the amount of P2,616,501.78, computed as follows:

AMOUNT CLAIMED		P3,736,075.92
Less: Disallowances		
(a) Per SGV's verification (Exh. J)	P432,803.47	
(b) Per Court's verification	49,726.34	482,529.81
ALLOWABLE INPUT VAT		P3,253,546.11
Less: Portion pertaining to export sales without export documents (P3,253,546.11 X 19.58%)		637,044.33
AMOUNT REFUNDABLE		**P2,616,501.78**

WHEREFORE, in the light of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P2,616,501.78 representing input value added tax paid by Petitioner on its domestic purchases of services for the period July 1, 1996 to September 30, 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
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