REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LA FRUTERA, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5985

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 16 2002

x - x

DECISION

This is a judicial claim for refund/tax credit in the amount of P8,945,148.44 allegedly representing excess and unutilized input VAT payments on purchases of capital goods as well as domestic purchases of goods/services for the period October 1, 1997 to December 31, 1997 and January 1, 1998 to December 31, 1998.

Petitioner is a domestic corporation with principal place of business at Datu Paglas Estate, Barangay Digal, Buluan, Maguindanao, Autonomous Region of Muslim Mindanao (ARMM). It is engaged in the business of producing and exporting *cavendish* bananas.

Petitioner is a duly registered Value-Added Tax (VAT) taxpayer with Tax Identification Number 004-397-647 VAT under BIR Certification of Registration No. RDO VAT Control No. 97-107-002104 dated April 1, 1997 (Exhibit C). It is likewise

7registered with the Board of Investments (BOI) under Certificate of Registration No. EP-014-97 issued on July 7, 1997 (Exhibit B).

Petitioner twice amended its quarterly VAT returns for the last quarter of 1997 and four quarters of 1998. The first amended quarterly VAT returns were filed on December 10, 1999 while the second amended quarterly VAT returns were filed on February 23, 2000. In both amendments, Petitioner reflected an aggregate amount of P8,945,148.44 as unutilized input VAT payments on domestic purchases of goods and services, broken down as follows:

Exhibit	Period Covered	Input VAT
D, I	4th quarter 1997	P 991,143.33
E, J	1st quarter 1998	1,260,612.47
F, K	2nd quarter 1998	1,083,892.17
G, L	3rd quarter 1998	1,788,254.91
H, M	4th quarter 1998	3,821,245.56
	Total:	P 8,945,148.44

On August 19, 1999, Petitioner filed with the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center five separate administrative claims for tax credit corresponding to the alleged unutilized input VAT payments of P8,945,148.44 (Exhibits N to W, inclusive).

Due to Respondent's inaction on the aforementioned claims, Petitioner filed the instant Petition for Review on December 28, 1999.

Petitioner based its claim on the provisions of Sections 112(A) and (B) of the Tax Code, as amended, which We hereby quote for clarity:

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Section 112. ***Refunds or tax credits of input tax.*** -

(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are 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 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.

To further support its case, Petitioner submitted various documents and presented witnesses to identify the same.

Respondent, on the other hand, by way of Special and Affirmative Defenses, alleges that:

1. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Respondent's Bureau.

2. Petitioner miserably failed to demonstrate that the tax subject of the case comes within the scope of claims for refund.

3. In a claim for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

4. The total amount of Eight Million Nine Hundred Forty Five Thousand One Hundred Forty Eight Pesos and Forty Four centavos (P8,945,148.44) claimed by the Petitioner as alleged refundable unutilized creditable VAT input taxes was not properly documented.

5. Taxes paid and collected are presumed to have been made in accordance with law and regulations.

6. Claims for tax refund are construed strictly against the claimant as they partake of the nature of an exemption from tax and it is incumbent upon the Petitioner to prove that it is entitled thereto under the law.

7. Moreover, Petitioner must prove that it has complied with the governing rules with reference to tax refund, which are found in Sections 204 and 229 of the Tax Code as amended.

However, Respondent opted to submit the case for decision based on the pleadings (CTA records, p. 247).

The parties then agreed that the issues to be resolved by this Court are as follows:

a) Whether or not Petitioner has unapplied or unutilized creditable VAT input taxes in the amount of P8,945,148.44 generated from the fourth (4^{th}) quarter ended December 31, 1997 and the four quarters of calendar year 1998, which is a proper subject of a claim for refund pursuant to Section 112 of the National Internal Revenue Code, as amended;

b) Whether or not the Petitioner's export sales of *cavendish* bananas are zero-rated for VAT purposes;

c) Whether or not the Petitioner's P8,945,148.44 unapplied or unutilized creditable VAT input taxes for the fourth (4^{th}) quarter ended December 31, 1997 and the four quarters of calendar year 1998 were generated by the Petitioner from its purchases of capital goods and/or purchases of domestic goods and services for the said period;

d) Whether or not the said P8,945,148.44 unapplied or unutilized creditable VAT input taxes generated for the fourth (4^{th}) quarter ended December 31, 1997 and four (4) quarters of calendar year 1998 remained unutilized and unapplied to any VAT output tax liability of the Petitioner;

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e) Whether or not Petitioner complied with the requirements necessary for the refund/tax credit of the P8,945,148.44 unapplied or unutilized creditable VAT input taxes paid for the periods: fourth (4^{th}) quarter ended December 31, 1997 and the four (4) quarters of calendar year 1998; and

f) Whether or not the creditable VAT input taxes of P8,945,148.44 generated for the fourth (4^{th}) quarter of 1997 and the four (4) quarters of calendar year 1998 are substantiated by the documentary evidence in the form of invoices and official receipts.

It is the averment of the Petitioner that part of the subject claim amounting to P5,014,327.99 which represents input VAT paid on domestic purchases of goods and services is attributable to its incidental revenues or pre-operating sales for the last quarter of 1997 and all four quarters of 1998 (Exhibit JJ, TSN, September 25, 2000, p. 16).

But a thorough examination of the evidence on record revealed that Petitioner has no sufficient proof that it generated zero-rated sales to which the input VAT payments of P5,014,327.99 can be attributed.

Section 4.100-1 of Revenue Regulations No. 7-95, provides:

> **SEC. 4.100-1.** ***Value-added tax on sale of goods or properties.*** - VAT is imposed and collected on every sale, barter or exchange or transaction "deemed sale" of taxable goods or properties at the rate of 10% of the gross selling price.
>
> The following sales by VAT-registered persons shall be subject to 0%:
>
> (a) Export sales
>
> "Export sales" shall mean:
>
> (1) 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 paid for in

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acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) x x x

(3) The sale of raw materials or packaging materials to an export-oriented enterprise whose export sales exceed seventy percent (70%) of the total annual production."

(4) x x x

(5) Those considered export sales under Article 23 and 77 of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws, x x x."

Section 4.100-2 of Revenue Regulations No. 7-95, the "Consolidated Value-Added Tax Regulations", is also quoted hereunder:

SEC. 4.100-2. ***Zero-rated sales.*** - 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.

Furthermore, Section 4.102-2 of the same Revenue Regulations, provides:

SEC. 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.

(b) Transactions subject to zero-rate. - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%):

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(1) Processing, manufacturing, or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;

(2) x x x

(3) x x x

(4) x x x

(5) Services performed by subcontractors and/or contractors duly accredited by either the Board of Investment or Export Development Council in processing, converting, or manufacturing goods for an enterprise whose export sales exceed 70% of the total annual production.

In relation to the foregoing, Section 2(c)(1)(2)(4) of Revenue Regulations No. 3-88, provides:

Section 2. Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:

Section 16. Refunds or Tax Credit of Input Tax. –

(c) *Claims for Tax Credits/Refunds.* - Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the City or Municipality where the principal place of the business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or Refund. In addition, the following documents shall be attached whenever applicable:

1. export sales

i) <u>photo copy of the export documents showing the amount of export, and the date and destination of the goods exported.</u> With respect to the foreign currency denominated sale, the photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.

ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations. (Emphasis supplies)

2. Zero-rated sale of services.

i) authenticated copy of the contract showing the person for whom the services were rendered, the amount of the consideration and description of the services and document evidencing actual payments.

ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

Under subparagraphs 1(ii) and 2(ii), the statement shall show the amount in foreign currency of the export proceeds or consideration and the date of inward remittance, conversion rate into Philippine currency and the total peso value thereof. (Underscoring supplied)

In its Petition for Review, Petitioner maintains that its export sales of *cavendish* bananas are subject to VAT at zero percent. Yet, in its amended VAT returns and annual income tax returns, Petitioner reflected nil zero-rated sales for the period involved in this case.

This Court is now in quandary as to what is the correct avowal. But Petitioner explains that the amounts so declared as export sales in 1998 were erroneously placed there by mistake (TSN, September 25, 2000, p. 13).

We are not convinced.

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We believe that they were actually export sales made by the Petitioner only that Petitioner fails to show ample evidence to prove its claim. After all, grave mistakes such as asserted cannot be overlooked.

Petitioner also argues that the amount of export sales stated in the Application for Tax Credit/Refund of VAT Paid for the fourth quarter of 1997 to fourth quarter of 1998 were in reality, pre-operating sales or incidental revenues in the context of the Banana Industry. For Petitioner, during the period subject of this claim, was still under the pre-operating stage and had not yet started its commercial operations (TSN, September 25, 2000, p. 10). As such, Petitioner had no commercial export sales but only pre-operating sales of P111,829,183.80. We noticed however, that these alleged incidental revenues or pre-operating sales were not declared by herein Petitioner in its 1998 income tax return.

Whatever its contention, the fact remains that the amount of P5,014,327.99 is being claimed as its input VAT on domestic purchases of goods and services. And We resolve to deny the same for the simple reason that Petitioner failed to prove that it generated zero-rated sales. With its ambivalent positions, We are not surprised. On one hand it claims that it had no export sales, while on the other hand, it states it had, but subject to zero rate.

The provisions of the law aforequoted are quite clear on how tax credit or refund on zero-rated export sales can be had. Petitioner's documents are not sufficient to support its assertions.

Therefore, what is left for consideration is whether or not Petitioner is entitled to the remaining claim of P3,930,820.45 representing input VAT payments on capital goods purchased for the subject period.

Section 4.106-1 of Revenue Regulations No. 7-95, provides, to wit:

> **Sec. 4.106-1.** ***Refund or tax credits of input tax.* -**
>
> x x x x x x x x x
>
> **(b) Capital Goods.** - Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operation.
>
> 'Capital goods or properties' refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services. (Emphasis supplied)

Relative thereto, Section 2(c)(4) of Revenue Regulations No. 3-88, is quoted, viz:

> **4. Purchase of Capital Goods.**
>
> i) original copy of invoice or receipt showing the date of purchase, purchase price, amount of value-added tax paid and description of the capital equipment locally purchased.
>
> ii) With respect to capital equipment imported, the photo copy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of the value-added tax. (Emphasis supplied)
>
> 5. x x x

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

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Plainly from the above provisions and Section 112(B) of the Tax Code, as amended, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, Petitioner must prove that:

1) it is a VAT registered entity;
2) it paid input VAT on capital goods purchased;
3) its input VAT payments on capital goods are duly supported by VAT invoices or official receipts;
4) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
5) the administrative and judicial claims for refund were filed within the two-year prescriptive period.

Records will show that Petitioner complied with all the aforementioned requirements. Nonetheless, We grant only a portion of its total claim of P3,930,820.45.

First and foremost, there is no question that Petitioner is a VAT registered entity (Exhibit C). Second, it paid input VAT on capital goods purchased. But from among the various suppliers' invoices/official receipts submitted, only the following purchases with the corresponding input taxes of P253,965.02 can be classified as capital goods:

Pre-marked Exhibit	Supplier	Purchases	Invoice Number	Invoice Amount	Input VAT
Y-120, Y-121	Marsson Industrial Corp.	trailing harrow - 1 unit	29180	P 120,000.00	P 10,909.09
Y-132	New Davao Starlight	bush cutter - 6 units	2337	55,200.00	5,018.18
Y-202	New Davao Starlight	bush cutter - 6 units	2428	55,200.00	5,018.18
Y-263, Y-264	D.I. Computer Sys, Inc.	computer - 4 units	14123	158,000.00	14,363.64
Y-263, Y-265	D.I. Computer Sys, Inc.	computer accessories	14121	95,000.00	8,636.36
Y-278	Uysekua Industrial Corp.	sticker machine - 1 unit	4946	95,000.00	8,636.36
Y-299	New Davao Starlight	kilowatt hour meter - 17 sets	2647	44,200.00	4,018.18
Y-324	RJ Homes	air conditioner - 14 units	0699	210,920.00	19,174.55

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Y-331	General Pump & Serv.	centrifugal pump – 1 unit	1129	60,000.00	5,454.55
Y-396	Integrated Asia Corp.	canopy/trailer	128	147,000.00	13,363.64
Z-14	RJ Homes	air conditioner - 1 unit	0974	17,980.00	1,634.55
Z-65, Z-66	D.I. Computer Sys, Inc.	HP laserjet/Epson printer	14317	210,500.00	19,136.36
Z-65, Z-67	D.I. Computer Sys, Inc.	Computer	14316	494,800.00	44,981.82
Z-178	Electrotel, Inc.	Motorola UHF mobile base	358	17,390.00	1,580.91
Z-215, Z-216	D.I. Computer Sys, Inc.	ergonomic chairs/comp table	14448	14,300.00	1,300.00
Z-224, Z-225	D.I. Computer Sys, Inc.	computer table - 6 units	14470	51,000.00	4,636.36
Z-291	IBest Corporation	Philips telephone set - 1unit	105	16,650.00	1,513.64
Z-500	D.I. Computer Sys, Inc.	Powergrid AVRs -5 units	14574	6,550.00	595.45
Z-542, Z-543	D.I. Computer Sys, Inc.	computer - 2 units	14616	120,350.00	10,940.91
AA-174, AA-175	D.I. Computer Sys, Inc.	computer - 1 unit	14908	61,200.00	5,563.64
AA-186, AA-187	Jeld Mktg & Eng'g Works	steel filing cabinets	680	9,500.00	863.64
AA-279, AA-280	RJ Homes	electric/ceiling fan - 2 units	2114	3,190.00	290.00
AA-421	Cebu Tristar Corp	"WEG"electric motor - 1 unit	46412	19,995.00	1,817.73
AA-518, AA-519	D.I. Computer Sys, Inc.	computer - 2 units	15353	99,800.00	9,072.73
BB-96, BB-97	SEA Comm'l Co., Inc.	portable welding machine	5744	64,000.00	5,818.18
BB-168	EMCOR, Inc.	refrigerator – 1 unit	501343	8,500.00	772.73
BB-289	New Davao Starlight	bush cutter – 10 units	4478	100,000.00	9,090.91
BB-436	Cebu Tristar Corp.	20 hp induction motor - 2 units	46058	56,390.00	5,126.36
BB-454	New Davao Starlight	bush cutter – 7 sets	4697	70,000.00	6,363.64
BB-504	D.I. Computer Sys, Inc.	computer - 1 unit	16960	49,500.00	4,500.00
CC-283	Southern Union Hard.	electric motor	111222	19,500.00	1,772.73
CC-388	D.I. Computer Sys, Inc.	computer - 2 units	16313	86,000.00	7,818.18
CC-601	Cruz Electrical & Const.	flow meter - 3 units	71762	54,000.00	4,909.09
CC-680	Therismos Multi-Trade	20 hp induction motor - 2 units	143	58,000.00	5,272.73
CC-685 to CC-687	D.I. Computer Sys, Inc.	computer - 2 units	16598	44,000.00	4,000.00
			Total:	P2,793,615.00	P253,965.02

Petitioner was able to establish that the input taxes of P253,965.02 were not applied against any output VAT liability during the period covering the Fourth Quarter of 1997 to the Fourth Quarter of 1998 as well as in the succeeding first quarter of 1999 (Exhibits D to M, and FF). Finally, the administrative claim filed on August 19, 1999 and the judicial claim filed on December 28, 1999, fell within the two-year prescriptive period.

IN VIEW OF ALL THE FOREGOING, Petitioner's claim for refund/tax credit is **HEREBY PARTIALLY GRANTED.** Respondent is **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the Petitioner in the amount of P253,965.02 representing excess and unutilized input VAT paid on purchases of capital

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goods covering the period beginning the fourth quarter of 1997 to the fourth quarter of 1998. No costs.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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

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