REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SILICON PHILIPPINES, INC. *(formerly Intel Philippines Manufacturing, Inc.)*, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

C.T.A. CASE NO. 6369

Members:

Acosta, *PJ*
Bautista, and
Casanova, *JJ*

Promulgated:

AUG 26 2008 ; 2:45 pm

x - x

DECISION

ACOSTA, *PJ:*

The Case

The Petition for Review seeks for the issuance of tax credit certificate of input value added tax (VAT) on domestic purchases of goods and services as well as on importation, attributable to zero-rated sales in the total amount of Twenty Five Million Three Thousand Two Hundred One Pesos and 61/100 (Php25,003,201.61) for the fourth quarter of taxable year 1999.

646

The Antecedent Facts

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at 1321 Apolinario Street, Bangkal, Makati City, Metro Manila.[1] It is registered as a preferred pioneer enterprise for the production/manufacture and export of tested and untested integrated circuits such as large scale integrated circuits and microprocessor. It is a registered entity per Certificate of Registration No. 85-1010 given by the Board of Investments on October 25, 1985 [2] as well as a VAT registered entity pursuant to Certificate of Registration No. 32A-3-002649 issued by the BIR.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax 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 excessively or in any manner wrongfully collected, or of VAT input taxes attributable to zero-rated revenue. She is holding office at the BIR National Office Building, Diliman, Quezon City, Metro Manila, where he may be served with summons and other legal processes.[4]

As a VAT-registered entity, petitioner filed its Quarterly VAT Return[5] for the fourth quarter of 1999, declaring therein its zero-rated sales of P2,407,719,607.48 which allegedly was paid for in acceptable foreign currency and was inwardly remitted to the Philippines in accordance with existing rules and regulations of the *Bangko*

---

[1] Admitted by Respondent during the February 22, 2002 Hearing
[2] Exhibit A
[3] Statement of Facts, Memorandum of the Respondent
[4] Admitted by Respondent in her Answer
[5] Exhibit D

947

Sentral ng Pilipinas pursuant to the provisions of Section 106(A)(2)(a)(1) of the 1997 Tax Code. In the same VAT Return, petitioner reported an output tax of P80,254.54 on its taxable sales and allegedly paid a total of Php25,083,456.15 input taxes on its domestic purchases as well as on importation of goods, attributable to its zero-rated sales.

On March 16, 2000, petitioner filed before the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance an application for tax credit/refund of P25,003,201.61 representing unutilized input value-added tax[6] covering the period from October 1, 1999 to December 31, 1999.[7]

Despite the alleged presentation of documentary evidence in support of its application, respondent failed to grant the tax credit being applied for. Consequently, petitioner filed before this Court its judicial claim for the issuance of tax credit certificate by way of a Petition for Review on December 21, 2001.

The Commissioner of Internal Revenue filed her Answer on February 4, 2002, and prayed for the dismissal of the case. She alleged therein the following Special and Affirmative Defenses:

> *"4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;*
>
> *5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center;*
>
> *6. To support its claim, it is imperative for petitioner to prove the following to wit:*

Elu

[6] Total input taxes of P25,083,456.15 less output tax of P80,254.54.
[7] Exhibits F and G

548

a. The registration requirements of a Value Added Taxpayers pursuant to Section 6(a) & (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95.

b. That the VAT input taxes of Php: 25,003,201.61 allegedly paid by petitioner from its domestic purchases of services were attributable to its zero-rated sales and such tax has not been applied against any output tax.

c. That petitioner's claim for tax credit or refund of the excess Input Value Added Tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 4.106-1 (Re: Refunds or Tax Credits of Input Tax) and Section 4.106-2 (Re: Procedures for Claiming Refunds or Tax Credits of Input Tax) of Revenue Regulations No. 7-95.

d. That petitioner domestic purchases of services were made in the course of its trade or business, properly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT in pursuance to Section 4.104-5(a) & (b) of Revenue Reg. No. 7-95 (Re: Substantiation of Claims for Input Tax Credit).

e. The requirements as enumerated under Section 4.104-2 of the Rev. Reg. 7-95. (Re: Persons who can avail of the Input Tax Credits)

f. The requirements under Section 4.100-2 in relation to Section 4.102-1 and Section 4.102-2 of the Rev. Reg. No. 7-95, which provides that petitioner's export sale of taxable goods and services to persons doing business outside the Philippines, are paid for in acceptable foreign currency actually or constructively remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

g. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112(A) and 229 of the Tax Code as amended.

7. Furthermore, in action 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/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted

Eu

941

to exist upon the vague implications. (Asia Petroleum Co., vs. Llamas 49 Phil. 466)

8. Also, petitioner must show that it has complied with the provisions of Section 204 (c) and 229 of the Tax Code on the prescriptive period for claiming refund/credit."

After trial, this case was submitted for decision on May 7, 2008 taking into consideration the respective Memorandum of the parties.

The Issues[8]

I

Whether or not the amount of Php25,003,201.61 representing petitioner's alleged unutilized input VAT taxes paid relative to its domestic purchases of goods and services covering the period from October 01, 1999 to December 31, 1999 were attributable to its zero-rated transactions.

II

Whether or not the said unutilized input VAT was carried over and applied against any of petitioner's output VAT liability for the said period or any succeeding quarter or quarters.

III

Whether or not Petitioner's domestic purchases of services were made in the course of its trade or business, properly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT.

IV

Whether or not Petitioner's export sale of taxable goods and services to persons doing business outside the Philippines, are paid for in acceptable foreign currency denomination actually or constructively remitted to the Philippines and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas.*

The foregoing issues boil down into a single point of whether or not petitioner is entitled to the issuance of a tax credit certificate allegedly arising from its unutilized/excess input tax of P25,003,201.61, attributable to its zero-rated sales for the fourth quarter of taxable year 1999.

[8] adopted by the parties during the February 22, 2002 hearing

The Court's Ruling

For refund/tax credit of unutilized input VAT, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, provides:

> "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 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 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 rules and 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."

Thus, based on the above-quoted provisions of Tax Code, the following requisites[9] must be complied with, viz:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

---

[9] Philex Mining Corporation v. Commissioner of Internal Revenue, CTA Case No. 6892 and 7014, promulgated on July 9, 2008

Eu

957

We shall now apply the aforementioned requisites in the case at hand to determine whether petitioner is entitled to a tax credit.

Going first to the fifth requisite of prescription, Section 112(A) of the Tax Code provides that within two years after the close of the taxable quarter when the sales were made, a VAT registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such zero-rated or effectively zero-rated sales. In ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,***[10] the Supreme Court had the occasion to rule that the two-year prescriptive period for the filing of a claim for VAT refund should not be counted from the close of the quarter, but from the date of filing of the VAT return, for it is only during that date that the VAT liability or refundability can be determined. Thus, applying the pronouncement of the High Court in the case at bar reveals that petitioner's administrative claim filed on March 16, 2000 and its Petition for Review before this Court on December 21, 2001 are well within the two-year reglementary period provided under Section 112(A) of the 1997 Tax Code reckoned from the date of filing of its quarterly VAT return for the fourth quarter of 1999 on January 24, 2000, considering that the two-year prescriptive period will end only on January 24, 2002.

As regards the first requisite, We determined that petitioner is engaged in zero-rated sale transactions. Being a VAT and a BOI-registered entity, its export sales are subject to zero percent (0%) rate of VAT pursuant to Section 106(A)(2)(a)(1) of the 1997 Tax Code.

---

[10] G.R. Nos. 141104 & 148763, June 8, 2007

952

To prove that it had generated a total export sales of P2,407,719,607.48 during the fourth quarter of 1999, petitioner presented the following documents, namely: (1) sales invoices, (2) export declarations, and (3) air way bills.[11] Moreover, in order to establish that the proceeds thereof were duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* rules and regulations, petitioner presented certificates of inward remittances.[12]

In an amended final report,[13] the commissioned independent CPA disclosed that out of the total export sales of P2,407,719,607.48, only the amount of P1,009,237,089.15 was supported with complete and original export sales documents. In the same report, it was observed that out of the total export sales of P2,407,719,607.48, only P563,753,840.22 was supported by original certificates of inward remittances and P222,621,594.56 is covered by an offsetting arrangement against inter-company payables.

After review, this Court finds the report of the commissioned independent CPA to be in order. Considering that the P786,375,434.78[14] amount of export sales were duly accounted for in accordance with the BSP rules and regulation, then, such amount qualifies as zero-rated sales subject to zero-percent (0%) VAT under Section 106(A)(2)(a)(1) of the 1997 Tax Code in relation to Section 112(A) of the same Code.

Although, it would appear that petitioner's alleged unutilized input tax correspondingly attributable to the duly substantiated zero-rated sales, may be a proper subject of a claim for tax credit, the same amount cannot be granted. Petitioner was not able to prove that it had not utilized the alleged excess input VAT. Bear in mind that in

---

[11] Exhibits KK to KK-2045, LL to LL-8437, MM to MM-1119, NN to NN-242, and OO to OO-196
[12] Exhibits E and QQ
[13] Exhibit PP; pp. 602 to 610, *Rollo*
[14] P563,753,840.22 plus P222,621,594.56

Ek

953

order to prove that the claimed input taxes had not been utilized against output tax for the succeeding quarters, petitioner offered as evidence Quarterly VAT Returns for the 1st quarter of taxable year 2000 up to the 4th quarter of taxable year 2001.[15] However, said pieces of evidence were denied admissions by this Court in a Resolution dated July 9, 2007 for petitioner's failure to present the originals thereof for comparison, as well as, submit the duly marked exhibits. Moreover, the inadmissibility of those exhibits was reiterated in another Resolution dated January 10, 2008 after finding that petitioner still failed to have the same exhibits compared with their originals, or submitted the certified true copies thereof during the subsequent hearings[16]. Hence, those documentary evidence which admissions were denied cannot be considered by this Court in disposing of the case. Therefore, for failure of the Petitioner to properly substantiate its allegation that the excess input taxes were not utilized against its output tax in the succeeding quarters proves fatal to its claim for refund/tax credit.

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *stricticissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[17] Thus, a taxpayer has the burden of proof to establish the factual basis of its claim for tax refund.[18] Like in this case, petitioner is duty-bound to present the original or certified true copy of the subsequent quarterly VAT returns because it is necessary to determine whether indeed the claimed excess input VAT had not been

[15] Marked as Exhibits J, K, L, M, N, O, P, Q, R, S, T and U
[16] August 7, 2007; September 14, 2007; October 19, 2007; and October 22, 2007 hearings
[17] Sea-Land Services, Inc. vs. Court of Appeals, 359 SCRA 441
[18] Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd., 244 SCRA 332

utilized against any output tax in the subsequent quarter/s. Such important determination is a pre-requisite to grant the claimed tax credit/refund.

WHEREFORE, the instant Petition for the issuance of tax credit certificate is hereby DENIED for insufficiency of material evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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 Justice