REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6263

Members:

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAR 0 6 2006

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DECISION

***CASTAÑEDA, JR., J.*:**

This Petition for Review seeks the issuance of a tax credit certificate in the total amount of P64,457,520.45 allegedly representing unutilized input value-added tax on domestic purchases of goods and services attributable to zero-rated export sales and importation of capital equipment for the period January 1, 1999 to March 31, 1999.

The following facts are established by the records and pleadings of the case:

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. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components, commonly referred to in the industry as Integrated Circuits or "IC's".

Petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 94-048-02621 dated July 6, 1994 *(Exhibit B)*.[1] It is likewise registered with the Board of Investments as a preferred pioneer enterprise enjoying a six-year income tax holiday in accordance with the provisions of the Omnibus Investments Code *(Exhibit C)* and now enjoying the preferential rate of 5% .[2]

For the period January 1, 1999 to March 31, 1999, petitioner seasonably filed its first Quarterly Value-Added Tax Return on April 22, 1999 reflecting, among others, output VAT in the amount of P145,316.96, input VAT on domestic purchases and importation of goods in the respective amounts of P20,041,888.41 and P44,560,949.00, and zero-rated export sales in the sum of P929,186,493.91 *(Exhibit D, inclusive of submarkings)*.

Petitioner alleges that the aforementioned zero-rated sales in the amount of P929,186,493.91 arose from its exportation of goods and were paid for in acceptable foreign currency inwardly remitted in accordance with the regulations of the Bangko Sentral ng Pilipinas. It further avers that the 1999 first quarter input taxes in the net amount of P64,457,520.45 was attributable to the claimed zero-rated export sales.

On the belief that it is entitled to the refund of input taxes attributable to its recorded zero-rated export sales, petitioner, on August 6, 1999, filed with the One-Stop-Shop Inter Agency Tax Credit and Duty Drawback Center of the Department of Finance a Claimant Information Sheet with No. 35420 *(Exhibit I, inclusive of submarkings)* together with an Application for Tax Credit/Refund of Value-Added Tax Paid *(Exhibit J, inclusive of submarkings)* covering the following input taxes for the first quarter of 1999:

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[1] Originally under RDO Control No. 32A-3-002649 dated January 1, 1988 *(Exhibit A)*.
[2] Paragraph 1,Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues.

	Amount
Tax Paid on Imported/Locally Purchased Capital Equipment	P44,560,949.00
Total VAT Paid on Purchases per Invoices Received During the Period for which this Application is Filed	19,896,571.45
Amount of Tax Credit/Refund Applied For	P64,457,520.45

On March 30, 2001, petitioner filed the instant Petition for Review with this Court in order to toll the running of the two-year prescriptive period provided under Section 229 of the National Internal Revenue Code of 1997 *(Tax Code, for brevity)*.

In his Answer filed through registered mail on June 1, 2001, respondent raised the following Special and Affirmative Defenses:

> 4. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;
>
> 6. Petitioner has not shown proof that the alleged domestic purchases of goods and services and importation of goods/capital equipment of which the VAT input taxes were paid are attributable to its export sales nor have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
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> 7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action for tax refund;
>
> 8. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 9. Well-settled is the rule that claims for refund is construed against the claimants since it partakes of the nature of an exemption from taxation.

During trial, petitioner manifested that that it was granted a fifty percent (50%) tax credit in the amount of P9,948,285.73 out of its total claimed input VAT on local purchases of P19,896,571.45 covered by Claimant Information Sheet No. 35420.[3] Hence, We are limiting Our review on the remaining claim of petitioner in the amounts of P9,896,571.45

[3] Manifestation and Motion to Set for Hearing, pages 82 to 84, Records.

and P44,560,949.00 representing input VAT on domestic purchases of goods and services and imported capital equipment, respectively.

The issues to be resolved by the Court were jointly stipulated by the parties as follows:

(a) Whether or not the petitioner's export sales were paid for in acceptable foreign currency exchange and the proceeds thereof had been duly accounted in accordance with the regulation of the Bangko Sentral ng Pilipinas.

(b) Whether or not the VAT input taxes on domestic purchases and importation of goods/capital equipment of the petitioner were all attributable to petitioner's zero rated sales.

(c) Whether or not the petitioner's claim for VAT refund of an alleged unutilized input VAT for the first quarter of 1999 is duly substantiated/supported by documentary evidence.

(d) Whether or not the VAT input taxes have not been applied to any output tax for the period covered in its claim or any succeeding period.

(e) Whether or not petitioner is entitled for the credit/refund of the tax arising from domestic purchases of taxable goods and services and importation of goods/capital equipment from January 1, 1999 to March 31, 1999 in the amount of P64,457,520.45 subject of this Petition.

We would like to emphasize at the outset that a judicial grant of claim for refund or issuance of tax credit certificate of either alleged overpaid, erroneously or illegally received internal revenue tax payment must always be based in law and actual facts and must be supported by competent evidence.

Petitioner Intel Philippines Manufacturing, Inc. anchors its claim on the provisions of Section 112(A) and (B) of the Code and Section 4.100-2 of Revenue Regulations No. 7-95 which provide:

> SEC. 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.

(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.

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.

We shall tackle first the required compliance with Section 112(A) pertaining to petitioner's claim for the issuance of a tax credit certificate of input VAT attributable to its claimed zero rated sales.

Petitioner must foremost substantiate its alleged zero rated sales by proper and valid documentary evidence to prove its cause. In particular, it must show its compliance with the invoicing requirements enumerated in Section 113 in relation to Section 237 of the Tax Code. Additionally, it must establish its adherence to the invoicing requirement under Revenue Regulations No. 7-95 entitled the Consolidated Value-Added Tax Regulations.

Section 113 of the Tax Code requires that the invoice or receipt issued by a VAT registered person should contain the following information:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons* —

(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

1. A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

> 2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237, to wit:

> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax **shall**, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue **duly registered receipts or sales or commercial invoices,** prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx *(Emphasis supplied)*

A careful examination of all the sales invoices of petitioner *(forming part of Exhibits N-1 to N-692)* reveals that the aforesaid documents were not duly registered with the Bureau of Internal Revenue as mandated under Section 237. There was no authority to print or BIR permit number reflected on the said invoices. Basic is the rule that before a printer can print receipts or sales or commercial invoices an authority to print must be secured first from the Bureau of Internal Revenue by all persons who are engaged in business pursuant to Section 238 of the Tax Code. Pertinent portion of Section 238 is quoted hereunder for easy reference:

> SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business **shall** secure from the Bureau of Internal Revenue an **authority to print receipts or sales or commercial invoices** before a printer can print the same. *(Emphasis supplied)*

The above directive seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem — the printer *(Hector S. De Leon, The National Internal Revenue Code Annotated, Seventh Edition, page 901)*. Since petitioner failed to show that it had secured BIR authority to print sales invoices, the Court cannot consider the sales invoices offered as valid proofs of petitioner's export sales subject to VAT at 0%. While We note that the invoices are computer generated, this does not mean that the requirement of securing prior BIR authority to print can be dispensed with. Contrariwise, a stringent monitoring should be effected because the printer is petitioner. Therefore, We consider all the export sales invoices of petitioner to be of no probative value in establishing its zero-rated sales for VAT purposes. Consequently, the remaining input VAT on local purchases of goods and services attributable thereto in the amount of P9,948,285.73 cannot be refunded.

In its Memorandum, petitioner insists that its computer generated export sales invoices for the first quarter of 1999 were under the authority of the permit issued through a letter dated 17 April 1987 by the Regional Director, Sol E. Hubalib, of Revenue Region No. 9. However, there is no such document in the records of the case. The only evidence presented by petitioner regarding the computer generated accounting records is the letter approving its request to use pre-numbered loose leaf computerized books of accounts such as the General Ledger, Accounts Payable, Subsidiary Ledger, Purchase Register, Export A2 Sales Register, Import Register *(Exhibit ZZ)*.

As to the other evidence presented by petitioner to prove actual exportation of goods such as certification of inward remittance, export declarations, and airway bills *(forming part of Exhibits N-1 to N-692)*, the Court cannot consider the same as sufficient. It should be noted that all of the aforementioned documents together with the duly registered VAT invoices or receipts, taken collectively, are the best means to prove exportation of goods.[4]

We proceed to the remaining claim for refund of petitioner in the amount of P44,560,949.00 allegedly representing input VAT paid on imported capital equipment.

Pursuant to the earlier quoted provisions of Section 112(B) of the Code and jurisprudence,[5] in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove:

1. That it is a VAT registered person;
2. That the input taxes claimed by petitioner were paid on capital goods;
3. That the input taxes have not been applied against output tax liability; and
4. That the administrative claim for refund was seasonably filed.

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[4] The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001

[5] Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000

Likewise, petitioner must prove the actual payment of VAT on the imported goods by submitting the documents specified in Section 4.104-5(b) of Revenue Regulations No. 7-95, to wit:

> "Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods."

Records reveal that petitioner is a VAT registered person. This fact was admitted by the respondent in his Answer and was evidenced by BIR Certificates of Registration *(Exhibits A and B)*. The total claimed input VAT was net of the output VAT liability for the first quarter of 1999. The same was never applied by petitioner against any of its succeeding quarters' output VAT liabilities. In fact, the amount sought to be refunded was deducted against the total available input tax as of September 30, 1999 forming part of P117,267,460.38 reflected as "Any VAT Refund/TCC Claimed" in the third Quarterly VAT Return *(Exhibits H-3 and YY)*.

It was also established that the instant claim was filed within the two-year prescriptive period both in the administrative and judicial levels, reckoned from April 22, 1999, the date when petitioner filed its 1999 first Quarterly VAT Return.

However, petitioner failed to comply with equally significant second requisite that the payment of input taxes on capital goods must be duly supported by VAT invoices and official receipts.

It should be noted that petitioner is claiming input VAT on imported capital equipment. Hence, it must present duly machine validated Import Entry Revenue Declarations or Bureau of Customs official receipts or any other document proving actual payment of VAT on the imported goods as required in the afore-quoted Section 4.104-5 of Revenue Regulations (R.R.) No. 7-95. Lamentably, such documents were never presented. Neither did petitioner submit any evidence to prove that the subject imported capital equipment qualify as capital goods pursuant to Section 4.106-1(b) of R.R. No. 7-95. Without these documents, petitioner's claimed input VAT payment in the amount of

P44,560,949.00 cannot be granted. Moreover, what was presented to prove payment of input VAT on importation of capital equipment was the 1999 first quarterly VAT return which carry no probative value in establishing **actual** payment *(Exhibit D-3)*. The required evidence is the import entry or other equivalent document.

Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption *(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999])*. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund *(Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997])*.

WHEREFORE, in view of the foregoing the instant Petition for Review is hereby ***DENIED*** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice