REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5941

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 05 2002

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DECISION

This case involves a claim for the issuance of a tax credit certificate in the amount of P47,026,225.64 representing unutilized input value-added tax (VAT, for brevity) on domestic purchases of goods and services for the ~~period July~~ 1, 1997 to December 31, 1997.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at 1321 Apolinario Street, Bangkal, Makati City. 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 "ICs". It is registered with the Bureau of Internal Revenue as a VAT entity with (latest) Certificate of Registration bearing RDO Control No. 94-048-02621, dated July 6, 1994 (Annex "B"). Petitioner is

128

likewise registered with the Board of Investments as a preferred pioneer enterprise in accordance with the provisions of the Omnibus Investments Code (Annex "C").

For the period July 1,1997 to December 31, 1997, Petitioner seasonably filed its Monthly VAT Declarations and quarterly Value-Added Tax Returns (Exhibits "A" to "F") reflecting an aggregate output tax liability of P119,456.09, zero-rated sales in the amount of P3,555,715,919.65 and input taxes in the sum of P45,573,630.54 (net of adjustments), detailed as follows:

Quarter Involved	Exhibit	Output Tax	Zero-Rated Sales	Input Tax
3rd Qtr.	C to C-4	P103,935.19	P1,411,155,040.71	P24,503,433.64
Less adjustment				915,852.54
Sub-total		P103,935.19	P1,411,155,040.71	P23,587,581.10
4th Qtr.	F to F-4	P 15,520.90	P2,144,560,878.94	P22,642,248.09
Less adjustment				656,198.65
Sub-total		P 15,520.90	P2,144,560,878.94	P21,986,049.44
Total		P119,456.09	P3,555,715,919.65	P45,573,630.54

Petitioner alleges that the aforementioned zero-rated sales in the amount of P3,555,715,919.65 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 (Exhibits "O" and "P", inclusive of sub-markings). It further avers that the input taxes in the sum of P45,573,630.54 are directly attributable to such zero-rated export sales.

Believing that it is entitled to the refund of input taxes attributable to its recorded zero-rated export sales, Petitioner filed, on two separate occasions, Applications for

129

Tax/Credit of Value-Added Tax Paid with the One-Stop-Shop Inter Agency Tax Credit and Duty Drawback Center of the Department of Finance. The application for refund of input taxes for the third quarter of 1997 in the amount of P24,399,498.45 was filed on February 1, 1999 while the claim for refund of input taxes for the fourth quarter of 1997 in the sum of P22,626,727.19 was filed on March 3, 1999 (Exhibits "K", "L", "M", and "N").

Petitioner waited for more than sixty (60) days for the Respondent to act on the aforesaid applications pursuant to Section 106(e) of the Tax Code, as amended but none was forthcoming. Thus, Petitioner was constrained to file the instant petition for review on September 30, 1999 in order to toll the running of the two-year prescriptive period under the law.

In his Answer, Respondent raised the following as Special and Affirmative defenses, thus:

> 1. The claim has partially, if not totally, prescribed;
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> 2. Petitioner failed to show compliance with the substantiation requirement under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;
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> 3. Petitioner has not shown proof that the alleged VAT input taxes attributable to its export sales 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 by the Central Bank;
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> 4. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;
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> 5. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

130

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

7. Well-settled is the rule that claims for refund are construed against the claimants since it partakes of the nature of an exemption from taxation.

This case was submitted for decision without the evidence and memorandum of the Respondent.

The sole issue to be resolved by the Court is whether or not Petitioner is entitled to the issuance of a tax credit certificate in the amount of P47,026,225.64 representing input taxes on domestic purchases of goods and services for the period July 1, 1997 to December 31, 1997.

Petitioner anchors its legal basis on the provisions of Section 106(a) [now Section 112(a)] of the Tax Code, as amended, which provides:

> **Sec. 106. Refunds or tax credits of 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 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.

131

Based on the afore-quoted law, a claim for refund may be granted if Petitioner will be able to prove that: (1) it is a VAT registered person; (2) its sales are zero-rated; (3) its administrative claims for refund are seasonably filed; (4) the input taxes claimed are attributable to zero-rated sales and were not applied against the output tax liability; and (5) foreign currency exchange proceeds had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (**Read-Rite Philippines, Inc. (formerly Sunward Technologies Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000**).

Records show that Respondent admitted in his Answer that Petitioner is a duly VAT-registered entity and that its export sales are subject to VAT at 0% (see Answer, paragraph 1, CTA records, p. 29). The taxability of Petitioner's export sales at 0% VAT was even affirmed by the Respondent in VAT Ruling No. 102(a)(1)402-88. It is also clear that the applications for refund/credit of input taxes paid were seasonably filed within two years from the close of each of the 1997 third and fourth VAT taxable quarters. We are further convinced that the input taxes were attributable to Petitioner's zero-rated export sales. However, we cannot ascertain from the records of this case whether or not the subject input taxes were utilized in the succeeding VAT taxable quarters, because if indeed they were then we cannot grant the refund claimed.

The 1997 and 1998 quarterly VAT returns submitted by Petitioner failed to show that the amounts of P24,399,498.45 and P22,626,727.19, representing allegedly unutilized input taxes for the third and fourth quarters of 1997, sought herein, were already deducted from the accumulated quarterly input taxes for the said years (Exhibits "C", "F", "G", "H", "I" and "J). The amounts reflected as "LESS: REFUND/TCM CLAIMED"

B2

in the aforementioned VAT returns do not tally with the amounts of the instant claim, to wit:

VAT Return	Exhibit	Refund/TCM Claimed
3rd Quarter 1997.	C to C-4	P15,959,590.98
4th Quarter 1997	F to F-4	844,534.39
1st Quarter 1998	G to G-2	19,012,203.74
2nd Quarter 1998	H to H-2	491,322.24
3rd Quarter 1998	I to I-2	18,002,595.53
4th Quarter 1998	J to J-2	-
Total		P54,310,246.88

Petitioner did not provide any explanation to the deductions reflected in the respective returns except for the amount of P18,002,595.53 shown in the 1998 third quarter VAT return which refer to the claim for refund of input taxes for the first quarter of 1997 and additional refund for third quarter of 1996. If we are going to apply the principle of "first-in first-out" to the above table of deductions, the present claim for refund would still form part of the accumulated input tax as of December 31, 1998 considering that the latest deduction pertains only to the first quarter of 1997 and third quarter of 1996 while the instant claim covers the latter period of the third and fourth quarters of 1997.

Unless shown that the claimed input VAT were deducted from the accumulated input VAT to be carried over/applied to the succeeding quarters, then we cannot grant the Petition for Review. To grant Petitioner's claim for refund, without proof of deduction of the corresponding amount from available input taxes, would be dangerous and tantamount to granting twice the refund herein sought to the prejudice of the government

133

(AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5187 and 5199, October 2, 1997).

WHEREFORE, in view of the foregoing, the petition for review is hereby **DENIED** for insufficiency of evidence and lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
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

134