REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMI PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5304

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 20 1998

x - x

DECISION

This case involves a claim for refund of allegedly excess input value-added taxes paid by the petitioner for the period January 1, 1994 to December 31, 1994 amounting to P4,653,402.87.

The facts of the case are simple.

Petitioner is a corporation duly organized and existing by virtue of the laws of the Philippines and is engaged in the business of exporting semi-conductor devices. It is a VAT-registered entity with VAT Registration No. 34-8-000-333 and as an exporter and a preferred pioneer enterprise, it is also registered with the Board of Investments with BOI Certificate of Registration No. 85-1032.

For the year 1994, petitioner paid VAT input taxes on its domestic purchases of taxable goods and services amounting to P4,653,402.87 which are directly attributable to its zero-rated export sales and filed the

A2

corresponding VAT returns with the respondent's Revenue District Office, computed as follows:

Exh.	Quarter Covered	Domestic Purchases of Taxable Goods & Services	VAT Input Taxes
"K"	First	₱12,239,487.70	₱1,223,948.77
"L"	Second	14,587,223.80	1,458,722.38
"M"	Third	8,518,839.20	851,883.92
"N"	Fourth	11,341,985.00	1,134,198.50
		₱46,687,535.70	₱4,668,753.57

Subsequently, petitioner filed its application for tax credit/refund of value-added tax paid for the year 1994 pursuant to Section 106(a) of the Tax Code (Exhibit "P") in the amount of ₱4,653,402.87.

Inaction of the respondent on the aforementioned application for refund prompted the petitioner to file the instant petition for review on December 18, 1995 lest it be barred by the mandatory two-year prescriptive period under Section 230 of the Tax Code.

Respondent, in her Answer to the Petitions for Review maintained the following Special and Affirmative defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

> 6) 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. (**Manufacturer's Bank & Trust Company as Trustee of Gen. Trust Plan vs. Commissioner of**

193

Internal Revenue, CTA Case No. 1053, Nov. 29, 1965);

7) Petitioner failed to comply with the substantiation requirement under Revenue Memorandum Order No. 40-94 dated May 6, 1994; and Section 16(c)(3) of Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88;

8) Petitioner has not shown proof that it has not applied the VAT input tax of ₱4,653,402.87 to any of its output tax liability for the period covered in its claim or any succeeding period;

9) In an action for tax 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;

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

11) 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.

During the course of the trial, petitioner presented as evidence the testimonies of its financial officers who identified the documentary evidence it submitted before Us and that of the representative of Punongbayan & Araullo Accounting Firm who testified that petitioner's claim for refund/credit are properly supported by documents covering value-added tax paid by the petitioner in 1994. To bolster its claim, petitioner formally offered the following documentary evidence:

194

1) Certification of Punongbayan & Araullo Accounting Firm dated March 11, 1996 (Exh. "A");

2) Schedule of VAT Invoices Paid for the period January 1, 1994 to December 31, 1994 (Exh. "B");

3) Summary of Input Taxes Paid for the period January 1, 1994 to December 31, 1994 (Exh. "C");

4) Photocopy of Supplier's Invoices and Official Receipts for the period January 1, 1994 to December 31, 1994 (Exhs. "D" to "D-2527");

5) Sales Register Report for the period January 1, 1994 to December 31, 1994 (Exh. "E");

6) Photocopy of Sales Invoices and Airway Bills for the period January 1, 1994 to December 31, 1994 (Exhs. "F" to "F-3599");

7) Photocopy of Bank Credit Memos for the period January 1, 1994 to December 31, 1994 (Exhs. "G" to "G-32");

8) Schedule of Dollar Remittances for the period January 1, 1994 to December 31, 1994 (Exh. "H");

9) Summary of Zero-rated Revenues for the period January 1, 1994 to December 31, 1994 (Exh. "I");

10) Value Added Tax Registration Certificate No. 34-8-000333 (Exh. "J");

11) VAT Returns for the first, second, third and fourth quarters of 1994 (Exhs. "K", "L", "M" and "N");

12) Letter Claim for Refund dated July 21, 1995 (Exh. "O");

13) Applications for Tax Credit/Refund of VAT paid for the first, second, third and fourth

quarters of 1994 filed on July 21, 1995 (Exh. "P"); and

14) BOI Certificate of Registration No. 85-1032 (Exh. "Q").

Respondent, on the other hand, not only failed to present any evidence to support her special and affirmative defenses, but she also opted not to file a memorandum to defend her case.

The sole issue to be resolved in this case is whether or not petitioner is entitled to a refund of the amount of ₱4,653,402.87 allegedly representing excess input value-added taxes paid by the petitioner for the period January 1, 1994 to December 31, 1994.

Quoted hereunder are the following provisions of the Tax Code and Revenue Regulations involved in the case at bar, to wit:

a) Section 106(a) of the Tax Code

"**SECTION 106.** ***Refunds or tax credits of input tax.*** - (a) *Export Sales.* - An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, <u>to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.</u>" (Underscoring supplied)

196

b) Section 16(c)(1) of Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88

> **"Section 16. Refunds or Tax Credits of Input Tax. - x x x.**
>
> xxx xxx xxx
>
> "(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 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 requirements shall be attached whenever applicable:
>
> 1. Export Sales
>
> i) photocopy of export document showing the amount export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy 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." (Underscoring supplied)

197

In summary, for VAT-registered taxpayers engaged in export sales, the following documents must be attached with their application for a tax credit/refund of excess input VAT:

> (1) photocopy of purchase invoice or receipt evidencing the value added tax paid;
>
> (2) photocopy of export document showing the amount of export, and the date and destination of the goods exported; and
>
> (3) for foreign currency denominated sale, photocopy of the invoice or receipt evidencing the sale of the goods as well as the name of person to whom the goods were delivered; and
>
> (4) 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.

A thorough and careful examination of all the documentary evidence presented by the petitioner revealed that it substantially complied with all the foregoing requirements, however, this Court is nevertheless inclined to join the respondent in her meritorious defense that petitioner's failure to show proof that it has not applied the VAT input tax of ₱4,653,402.87 to any of its output tax liability for the period covered in its claim <u>or any succeeding period</u>, would be a sufficient

98

ground to rule on the denial of petitioner's claim for refund/credit. Take note that in the fourth quarter VAT return it opted to carry over the refundable amount to subsequent quarter.

In a recently decided case involving the same parties entitled **AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5187 and 5199, October 2, 1997,** this Court had the occasion to apply the same ruling that not only must the petitioner present as evidence the VAT Returns for the period involved in the claim but also petitioner's VAT Return for the immediately succeeding quarter to accurately prove that the excess input VAT sought to be refunded by the petitioner had not been forwarded to the succeeding quarter. Portions of the said case is quoted hereunder for emphasis:

> "As regards the last issue, this Court finds that petitioner failed to convincingly show that its input taxes have not been applied to its output tax liabilities. We note that petitioner's excess VAT credits (input taxes) beginning from the last quarter of 1992 up to the last quarter of 1993 have been cumulatively added and forwarded to succeeding quarters as shown under box no, 16 of the respective VAT return for each quarter involved (Exhibits "B" to "B-4"). Thus, the input taxes being claimed by the petitioner have been forwarded to the succeeding first quarter of 1994. At this point, <u>We cannot ascertain whether or not said input taxes have been applied to petitioner's output tax liability for the first quarter of</u>

199

1994 and other succeeding quarters thenceforth. Petitioner has not introduced any evidence to prove this point. It could have submitted one of its succeeding VAT returns right after it decided to file an application for refund and reflecting under box 15 thereof that it had deducted the amount being claimed for refund. Unless shown, there is really nothing to refund because the input taxes being claimed have actually been elected by the petitioner to be forwarded as excess VAT credits to the succeeding first quarter of 1994. To grant petitioner's claims for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government." (Underscoring supplied)

WHEREFORE, in the light of all the foregoing, petitioner's claim for issuance of tax credit certificate or refund of excess input VAT payments for the period January 1, 1994 to December 31, 1994 is hereby **DENIED** for failure of the petitioner to substantiate the fact that its input taxes have not been applied to any output tax liability.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

200

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
Court of Tax Appeals

201