REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

SPECIALTY PULP MANUFACTURING, INC., ***Petitioner,***	**C.T.A. CASE NO. 7349**
	Members:
	CASTAÑEDA, JR., Chairperson UY, and
-versus-	PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	AUG 2 9 2008 8:30 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business (*Commissioner of Internal Revenue vs. Toshiba Information Equipment [Phils.], Inc., 466 SCRA 221)*, and only after the taxpayer-claimant has satisfactory proven that the goods and properties purchased indeed qualify as capital goods, pursuant to *Section 4.106-1 (b) of Revenue Regulations 7-95.*

Finally, the taxpayer must comply with all the requisites for claiming a tax refund or credit.

THE CASE

This is a Petition for Review filed by Specialty Pulp Manufacturing, Inc. (hereafter petitioner) praying for the refund or issuance of a tax credit certificate in the amount of P7,474,539.16, allegedly representing petitioner's unutilized input value-added tax on purchases of capital goods for the third (3^{rd}) and fourth (4^{th}) quarters of the taxable year 2003.

THE FACTS

The facts are not in dispute:

Petitioner is a corporation duly registered in accordance with Philippine laws, with principal office located at Room 403, CSP Building, No. 815 Quezon Avenue, Quezon City. It is engaged in the manufacture and export of pulp paper and paperboard, and is a wholesaler of agricultural raw materials and animals. Petitioner is registered with the Bureau of Internal Revenue (BIR) and has been granted a Taxpayer Identification No. 214-820-909-000 dated December 7, 2008.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including, among others, the power to decide, approve and grant refund of tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

For taxable year 2003, on October 27, 2003 and January 23, 2004, petitioner filed its returns for the 3rd and 4th quarters, respectively. The said quarterly returns were amended on June 28, 2005.

On June 29, 2005, petitioner filed with the BIR an application for issuance of tax credit certificates for its purported unutilized input VAT for the aforesaid quarters of taxable year 2003.

In order to preserve its right to judicially claim the alleged unutilized input VAT in the amount of P7,474,539.16, on October 24, 2005, petitioner filed the instant Petition for Review.

In his Answer, respondent alleged by way of special and affirmative defenses that claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption; the taxpayer has the burden to show that the taxes were erroneously or illegally paid; failure on the part of the petitioner to prove the same is fatal to its cause of action; and petitioner should prove its legal basis for claiming the amount being refunded.

Petitioner presented Gilbert S. Lim and Jerome Antonio B. Constantino, the Court Commissioned Independent CPA, as witnesses, and documentary evidence, marked as *Exhibits "A" and "H"*, together with their submarkings.

On the other hand, respondent submitted the case for decision, without presenting any evidence. Both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. On June 4, 2008, petitioner filed its "Memorandum", while respondent failed to comply. On June 10, 2008, the case was deemed submitted for decision.

ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE INPUT TAXES OF THE PETITIONER FOR THE 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2003 AROSE FROM PURCHASES OF CAPITAL GOODS.

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II

WHETHER OR NOT THE INPUT VALUED-ADDED TAX, WHICH ALLEGEDLY PERTAINED TO THE PURCHASE OF CAPITAL GOODS, REMAINS UNAPPLIED AGAINST ANY OUTPUT VALUE-ADDED TAX.

III

WHETHER OR NOT PETITIONER HAS SUFFICIENTLY SUBSTANTIATED BY DOCUMENTARY EVIDENCE ITS CLAIM FOR REFUND.

Principal Issue

The above stipulated issues boil down to the principal issue of whether or not petitioner is entitled to a refund or tax credit certificate in the amount of P7,674,536.16, representing petitioner's unutilized input VAT on purchases of capital goods for the third and fourth quarters of the taxable year 2003.

THE COURT'S RULING

The petition has no merit.

The pertinent provision on claims for refund of input taxes attributable to purchases of capital goods is Section 112(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** —
>
> xxx xxx.
>
> **(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."

Pursuant to the above provision, in order to be entitled to a refund or issuance of tax credit certificate of input VAT paid on capital goods purchased, petitioner must prove the following:

1) petitioner is a VAT-registered entity;

2) that its input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts;

3) petitioner did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

4) the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

Thus, it is imperative that petitioner should be able to prove the above requirements.

First Requisite

Section 112(B) of the NIRC of 1997, as amended, provides that in order to be entitled to the claim for refund/tax credit of input VAT paid on its purchased capital goods, petitioner must be a VAT-registered entity. A cursory examination of the documentary evidence presented reveals that petitioner failed to present any VAT Certificate to prove its VAT registration.

Second Requisite

As regards the second requisite, it is essential first to determine the nature of the capital goods or properties, as basis for refund or issuance of tax credit certificate. *Section 4.106-1 (b) of Revenue Regulations No.7-95* provides that *"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) of the NIRC of 1997[now Section 34 (F)],* and used directly or indirectly in the production or sale of taxable goods or services.

Pursuant to the above provision, the purchased goods and properties must have the following qualities to qualify as capital goods:

1) useful life greater than one year;

2) treated as depreciable assets under *Section 34 (F)*; and

3) used directly or indirectly in the production or sale of taxable goods or services.

To prove its purchases of capital goods, petitioner presented and offered in evidence various suppliers' invoices, official receipts, cash vouchers and cash advance liquidation forms (*Exhibits "R-13" to "R-16"*), including the Schedule of Importations (*Exhibit "R-6"*), Schedule of Purchases and Input VAT for the months of July to December 2003 (*Exhibits "R-7" to "R-12"*), and report of the Court-Commissioned Independent CPA (*Exhibit "Q"*).

A perusal of the said documents shows that certain purchases are in the nature of depreciable assets. Petitioner, however, failed to present documents, such as its detailed general ledger and audited financial statements, to enable this court to determine which of the subject purchases actually formed part of its "Property, Plant and Equipment" account. Since petitioner failed to show and prove that the said purchases fall squarely within the meaning of "capital goods and properties", as defined under *Section 4.106-1(b) of Revenue Regulations No. 7-95*, the second requirement has not been met.

Third Requisite

Petitioner has complied with the third requirement. Petitioner did not offset its input VAT claimed against any output VAT liability as it started its commercial operation only in September 2004. Logically, petitioner could not have generated any output tax liability from July to December 2003 to which the input VAT may be applied or credited. Likewise, petitioner was not able to apply or utilize its accumulated input VAT to the succeeding quarters. Petitioner's VAT return for the 3rd quarter of 2005 (*Exhibits "M" and "R-17"*) indicated that the input tax of P10,990,950.25 (which includes the amount of P7,474,539.16 sought to be refunded) was deducted as "Any VAT Refund/TCC Claimed" from the "Total Available Input Taxes" of P25,378,550.81, as of the 3rd quarter of taxable year 2005. Thus, the resulting excess input taxes of P14,387,600.56 to be carried over to the succeeding quarters of taxable year 2006 no longer included the claimed input taxes of P7,474,539.16.

Fourth Requisite

As shown by the evidence on record, the fourth requisite was met by the petitioner. It timely filed its administrative and judicial claims for refund.

The reckoning of the two-year prescriptive period for the filing of claim for VAT refund starts from the date of filing of the corresponding Qaurterly VAT Return (*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 524 SCRA 90-91, 127*).

The subject claim covers the 3rd and 4th quarters of taxable year 2003, for which petitioner filed its VAT returns on October 27, 2003 (*Exhibit "B"*) and January 23, 2004 (*Exhibit "C"*). Counting from these dates, clearly the administrative claim for refund filed on June 29, 2005 (*Exhibit "F"*) and the present Petition for Review filed on October 24, 2005 were both filed within the two-year prescriptive period.

In sum, notwithstanding petitioner's compliance with the third and fourth requisites, this Court is still constrained to deny petitioner's claim for refund/tax credit because petitioner was unable to satisfy the first and second requisites.

Laws Granting Tax Exemption Are Construed *Strictissimi Juris* Against the Taxpayer and Liberally In Favor of the Taxing Authority

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting exemption from tax are construed s*trictissimi juris* against the taxpayer and liberally in favor of the taxing authority (*Tax Principles and Remedies, 2nd ed. 2005, p. 111, by Justice Japar B. Dimaampao*). Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-land Service, Inc. vs. Court of Appeals, 357 SCRA 444; BPI-Family Savings Bank vs. Court of Appeals, et al., 330 SCRA 507*). Petitioner has failed to meet the burden of proof required in order to establish the factual basis of its claim for tax refund (*Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, 477 SCRA 779*).

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
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.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.

ERNESTO D. ACOSTA
Presiding Justice