REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

FILINVEST DEVELOPMENT CORPORATION, Petitioner,	**C.T.A. CASE NO. 6857**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 2 9 2007 3:05 p.m.

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DECISION

UY, J.:

This is a Petition for Review filed by petitioner, Filinvest Development Corporation, against respondent, Commissioner of Internal Revenue, seeking the refund or issuance of tax credit certificate in the amount of NINE MILLION TWO HUNDRED FIFTY TWO THOUSAND FOUR HUNDRED EIGHTEEN PESOS AND 96/100 (P9,252,418.96), representing petitioner's alleged unutilized input Value-added Tax (VAT) arising from its installment purchase of realty covering the period from the fourth quarter of calendar year 2001 to the fourth quarter of calendar year 2003.

THE FACTS

As borne out by the records of this case, the antecedent facts are as follows:

Petitioner, Filinvest Development Corporation, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at No. 173 P. Gomez Street, Municipality of San Juan, Metro Manila. On the other hand, respondent, Commissioner of Internal Revenue, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out all the functions, duties and responsibilities of said Office, including, *inter alia,* the power to decide, approve and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes. Respondent may be served with summons and other necessary court processes at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

The petition for review alleges, among others, that relative to the regular business operations of petitioner, it purchased real property under an installment sale from Fort Bonifacio Development Corporation for which it incurred input VAT from the Fourth Quarter, calendar year 2001, until the Fourth Quarter, calendar year 2003, in the total amount of P9,252,418.96, which may be the subject of a claim for refund (or issuance of a TCC) as the same has not allegedly been offset against any output VAT; that as a duly notified Large Taxpayer by respondent, it has been filing its Monthly and Quarterly VAT Returns (BIR Forms Nos. 2550-M and 2550-Q, respectively), particularly, from the Fourth Quarter of 2001 until the Fourth Quarter of 2003, through the Electronic Filing and Payment System (EFPS) of respondent[1].

Below is a summary of pertinent information in the returns.

EXH	QTR.	CY	Date of Filing		Total Domestic Purchases		Total Input Vat		Output VAT		Overpayment Claimed
A	4th	2001	1/15/02	P	11,931,953.70	P	1,193,195.37	P	591,450.09	P	37,843,719.62
D	2nd	2002	7/22/02		-		-		5,259,411.46		39,500,887.65
F	3rd	2002	10/24/02		11,917,362.50		1,191,736.25		1,612,893.79		39,079,730.11
H	4th	2002	1/19/03		11,885,791.60		1,188,579.16		1,085,935.20		39,182,374.07
J	1st	2003	4/22/03		12,548,474.00		1,254,847.40		221,198.22		40,216,023.25
L	2nd	2003	7/17/03		134,951,255.90		13,495,125.59		6,366,804.29		47,344,344.55
N	3rd	2003	10/22/03		133,371,914.63		13,337,191.46		560,497.06		60,121,038.95
P	4th	2003	1/21/04		139,877,947.70		13,987,794.77		25,837,926.44		48,270,907.28
			Total	P	456,484,700.03	P	45,648,470.00	P	41,536,116.55	P	351,559,025.48

On December 30, 2003, petitioner, through counsel, filed with respondent Commissioner, via the Large Taxpayers Audit and Investigation Division I (LTAID I), an administrative claim for refund of or issuance of tax credit certificate for its alleged unutilized input VAT of P9,252,418.96, covering the period from the Fourth Quarter of calendar year 2001 to the Fourth Quarter of calendar year 2003.[2]

On January 20, 2004, petitioner received Letter of Authority No. 2781[3] authorizing BIR Officer Cristina Costales[4] to examine its books of accounts, pursuant to its refund claim. However, despite notice, respondent maintains that petitioner failed to submit its books of accounts and other accounting

[1] Paragraph 3, Petition for Review, Docket, p. 2.
[2] Paragraph 3, Joint Stipulation of Facts and Issues, Docket, p. 54; BIR Records Folder 1, p. 3.
[3] Exhibit "8", BIR Records Folder 3, p. 34.
[4] Exhibit "20", Docket, pp. 269-270.

records. Thus, on February 2, 2004, a Letter of Authority No. 2782[5] dated January 19, 2004 was again served on petitioner, mandating BIR Revenue Officer Arthur Ramos to investigate petitioner's claim for refund. Thereafter, petitioner received several notices and requests for the presentation of records and other necessary documents.

On January 26, 2004, petitioner filed the instant Petition for Review before this Court to allegedly protect its rights to the subject claim for refund in accordance with Section 229 of the National Internal Revenue Code (NIRC) of 1997.

In the Answer, respondent asserts the following Special and Affirmative Defenses:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
>
> 5. To support its claim, it is imperative for petitioner to prove the following, viz:
>
>> a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>>
>> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code as amended;

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[5] Exhibit "1", BIR Records Folder 3, p. 1; Transcript of Stenographic Notes (TSN), September 13, 2006, pp. 7-10.

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P9,252,418.96 allegedly paid by the petitioner on its purchase of land from the fourth quarter of 2001 until the fourth quarter of 2003 and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

6. Furthermore, in an 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 to exist upon vague implications (Asiatic Petroleum Co. {P.I} v. Llanes, 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil 670);

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.[6]"

During trial, both parties presented their respective documentary and testimonial evidence. In substantiating its claim, petitioner presented its witness, Rowena Bernadette Reyes, who identified its documentary exhibits, such as, its quarterly VAT returns, official receipts, and statement of accounts showing amortization payments to Fort Bonifacio Development Corporation, to substantiate its claim. The details from the Statement of Account and official receipts are shown below:

Statement of Account						Official Receipts			
EXH	SA Date		Principal and Interest		Corresponding VAT	EXH	Date		Amortization
Y	9/28/01	P	12,722,076.00	P	1,156,552.36	Q	10/8/01	P	12,143,799.82
Z	12/19/01		12,722,075.00		1,156,552.27	R	4/9/02		12,143,798.96
AA	3/14/02		12,722,075.00		1,156,552.27	S	7/8/02		12,143,798.87
BB	6/20/02		12,722,075.00		1,156,552.27	T	1/8/02		12,143,798.86
CC	9/20/02		12,722,075.00		1,156,552.27	U	10/7/02		12,143,798.86

[6] Docket, pp. 24-27.

DD	11/27/02		12,722,075.00		1,156,552.27	V	1/7/03	12,143,798.86
EE	3/13/03		12,722,076.00		1,156,552.36	W	4/8/03	12,143,799.82
FF	6/23/03		12,722,075.00		1,156,552.27	X	10/7/03	12,143,798.86
	Total	*P*	***101,776,602.00***	P	***9,252,418.36***		**Total**	P ***97,150,392.91***

Respondent likewise presented its witnesses, Revenue Officers Reynaldo S. Calo and Cristina Y. Costales, to show that despite receipt of various Letters of Authority and requests for presentation of books of accounts, petitioner failed to present supporting documents, receipts and invoices to justify its claim for overpayment.

Upon admission of respondent's documentary evidence in the Resolution dated April 25, 2007[7], the parties were directed to submit their respective Memorandum within thirty (30) days from receipt thereof. Only respondent filed the required Memorandum within the period given, and this case was submitted for decision on July 12, 2007.[8]

ISSUE

A sole issue has been stipulated and agreed upon by the parties, to wit:

"Whether Petitioner is entitled to a refund/or issuance of a tax credit certificate in the amount of P9,252,418.96, allegedly representing Petitioner's unutilized input VAT incurred from the purchase of land, covering the period from the Fourth Quarter, calendar year 2001, until the Fourth Quarter, calendar year 2003."[9]

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[7] Docket, pp. 274-275.
[8] Docket, p. 294.
[9] Joint Stipulation of Facts and Issues, Docket, p. 55.

THE COURT'S RULING

We deny the petition.

Petitioner hinges its subject claim for refund of input VAT on its purchase of capital goods on Section 112 (B) of the NIRC of 1997, as amended, to wit:

> "**Sec. 112. Refunds or Tax Credits of Input Tax. –**
>
> **x x x x x**
>
> (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."

This law is implemented by Section 4.106-1 (c), Revenue Regulations No. 7-95, specifically, Section 4.106-1 (c) as follows:

> "**Sec. 4.106-1. Refunds or tax credits of input tax. –**
> x x x
>
> (c) Land — Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes on land purchased to the extent that such input tax has not been applied to output tax. The application should be made within two (2) years after the close of the taxable quarter when the purchase was made.
>
> "Refund of input taxes on land shall be allowed only to the extent that such land is used in VAT taxable business."

Based on the foregoing legal provisions, a taxpayer is permitted by law to claim tax refund or the issuance of a tax credit certificate 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, upon compliance with the following requirements:

1. That the applicant is a VAT-registered person;
2. That there be a purchase of land;
3. That the purchase of land be substantiated by sufficient evidence;
4. That the input taxes have not been applied against the output taxes;
5. That the application for the refund of unutilized or excess creditable input VAT arising from the purchase of land has been made within two years after the close of the taxable quarter when the purchase was made; and
6. That the land subject of the purchase was used by the applicant in his VAT taxable business.

1st Requisite: That the applicant is a VAT registered person

Any person who, in the course of trade or business, sells, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed under Sections 106 to 108 of the National Internal Revenue Code (NIRC)[10]. And an entity/taxpayer subject to VAT is required to register with the appropriate Revenue District Officer under Section 236(A) and (C) of the NIRC of 1997, as implemented by Sections 4.107-1 to 4.107-6 of RR 7-95, the pertinent portions of which read as follows:

> "**Sec. 236. Registration Requirements.-**
>
> *(A) Requirements.-* Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:
>
> (1) Within ten (10) days from date of employment, or
> (2) On or before the commencement of business, or
> (3) Before payment of any tax due, or

[10] Section 105, paragraph 1, NIRC of 1997.

(4) Upon filing of a return, statement or declaration as required in this Code.

The registration shall contain the taxpayer's name, style, place of residence, business and such other information as may be required by the Commissioner in the form prescribed therefore.

xxx xxx xxx

(C) *Registration of Each Type of Internal Revenue Tax.* – Every person who is required to register with the Bureau of Internal Revenue under Subsection (A) hereof, shall register each type of internal revenue tax for which he is obligated, shall file a return and shall pay such taxes and shall update such registration of any changes in accordance with Subsection (E) hereof."

Revenue Regulation 7-95:

SECTION 4.107-1. Registration of Value Added Taxpayers. (a) In general. — Any person who sells, barters, exchanges, leases goods or properties and renders services subject to VAT imposed in Sections 100 and 102 of the Code shall register the appropriate Revenue District Officer using BIR Form No. 1556 and pay an annual registration fee in the amount of One thousand pesos (P1,000) using BIR Form No. 1558 for every separate or distinct establishment or place of business and every year thereafter on or before the 31st day of January."

Upon compliance with the aforementioned requirements, a certificate shall be issued evidencing the registration by the appropriate Revenue District Office where the application was filed.

In the present case, it is alleged in paragraph 1 of the petition for review [11] that petitioner is a VAT registered taxpayer (with TIN No. 000-053-167-000VAT) primarily engaged in the purchase, mortgage, sale ownership, development and management of real estate, inclusive of land, buildings, houses, apartments, and other structures and immovables of whatever kind,

[11] Petition for Review, p. 1, Docket p. 1.

and attached therewith is a **photocopy** of petitioner's certificate of VAT Registration marked as Annex "A"[12]. This matter was presented for stipulation by petitioner's counsel during the pre-trial held on May 21, 2004, whereby respondent's counsel conditionally admitted the authenticity and issuance in accordance with law of petitioner's VAT registration subject to the presentation of petitioner's original Certificate of VAT Registration.[13]

However, in the course of the trial, as well as in the filing of petitioner's Formal Offer of Evidence on March 17, 2006[14], the original Certificate of VAT Registration, or a certified true copy thereof, was not included therein.

It is well-settled that the courts cannot consider evidence which has not been formally offered. Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.[15]

Moreover, Section 34, Rule 132 of the Rules of Court, provides that "[t]he court shall consider no evidence which has not been formally offered." A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted

[12] Paragraph 1 of Petition for Review, Docket, p. 1.
[13] TSN, May 21, 2004, p. 6.
[14] Formal Offer of Evidence, Docket, pp. 113-126.
[15] Far East Bank and Trust Company vs. Commissioner of Internal Revenue, 502 SCRA 87 (2006).

consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility.[16]

In the instant case, petitioner failed to meet the condition imposed by respondent's counsel during pre-trial to present the original or certified true copy of its Certificate of VAT Registration. Consequently, the Court finds non-compliance with the first requirement.

2nd and 3rd Requirements: That there be a purchase of land and that the purchase of land be substantiated by sufficient evidence.

The second requirement speaks of the purchase of land.

Section 4.104-5 of Revenue Regulation 7-95 provides that "purchase of land" must be evidenced by a copy of the public instrument evidencing conveyance thereof, and in petitioner's case, a contract to sell, together with the VAT receipt issued by the seller. The pertinent portion thereof reads as follows:

> "**Sec. 4.104-5. Substantiation of claims for input tax credit.** - (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax shall be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. **Input taxes on purchase of real property should be supported by <u>a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller</u>.**" xxx. (*Emphasis and underscoring supplied*)

Clearly from the foregoing, petitioner is required to present the public instrument evidencing its alleged purchase of real property under an installment sale, together with the VAT receipts issued by the seller thereof

[16] Ong vs. Court of Appeals, 301 SCRA 387 (1999).

covering its installment payments. Relative thereto, petitioner presented official receipts pertaining to eight (8) amortization payments, together with copies of the statements of account corresponding to these amortization payments, as well as a photocopy of the Contract to Sell it entered into with Fort Bonifacio Development Corporation, evidencing its purchase of land on installment.

The issue that confronts the Court is whether or not the photocopy of the Contract to Sell is admissible to prove the fact of purchase of land.

We rule in the negative as the same violates the "Best Evidence Rule" provided in Section 3, Rule 130 of the Revised Rules of Court, to wit:

> "*Sec. 3. Original document must be produced; exceptions-* **When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself**, except in the following cases:
>
> > (a) When the original has been lost or destroyed, or cannot be produced in court, without the bad faith on the part of the offeror;
> >
> > (b) When the original is in the custody or under the control of the party against whom the evidence is offered and the latter fails to produce it after reasonable notice;
> >
> > (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
> >
> > (d) When the original is a public record in the custody of a public officer or is recorded in a public office." (*Emphasis supplied*)

Although petitioner's witness, Rowena Bernadette B. Reyes, testified that she has custody, among other documents, of the Contract to Sell between petitioner and Fort Bonifacio Development Corporation[17] during the hearing held on July 4, 2005[18] and subsequently cross-examined thereon on January 16, 2006[19], nevertheless, petitioner failed to submit the original or certified true copy of said Contract to Sell as mandated under the Best Evidence Rule. The exceptions mentioned above do not apply in this case. Hence, the third requisite was not adequately met.

4th Requirement: That the input taxes have not been applied against the output taxes.

The Quarterly VAT Returns[20] submitted by petitioner to show that input taxes have not been applied against output taxes do not satisfy the fourth requirement.

All the schedules for Creditable Value-added Tax Withheld in the returns do not show that a deduction in the amount of P9,252,418.96 from the available input tax was ever made. This claim would have earned partial merit if petitioner reflected any amount deducted from its creditable input tax.

Again testimonial evidence was presented to support the claim that the P9,252,418.96 was deducted from the unutilized input VAT.[21] Still, no sufficient documentary evidence, particularly, the additional monthly or quarterly VAT Returns showing the deduction or adjustment, was presented to confirm this claim. The Best Evidence Rule again finds application in this situation. Inasmuch as the original was not presented to confirm the entries in the returns in issue, petitioner's allegations do not hold water.

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[17] Exhibit "MM", Docket, pp. 177-198.
[18] Minutes of hearing held on July 4, 2005, Docket, p. 105.
[19] TSN, January 16, 2006, p. 14.
[20] Exhibits "A", "D", "F", "H", "J", "L", "N", "P", Docket, pp. 127, 130, 133, 136, 139, 142, 145 and 148.
[21] Testimony of Rowena Bernadette Reyes, TSN, January 16, 2006, pp. 5-11.

5th Requirement: That the application for the refund of unutilized or excess creditable input VAT arising from the purchase of land has been made within two years after the close of the taxable quarter when the purchase was made.

The fifth requirement should be construed together with Section 4.106-2 of Revenue Regulation No. 7-95, in relation to Section 229 of the NIRC of 1997.

> "**Section 4.106-2. Procedures for claiming refunds or tax credits of input tax.**
>
> xxx xxx xxx
>
> (c) Period within which refund or tax credit of input taxes shall be made.-
>
> xxx xxx xxx
>
> In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise, the decision will become final. **However, if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue after the sixty (60) day period from the date of submission of the application but before the lapse of the two (2) year period from the date of the filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals.** xxx" (*Emphasis supplied*)
>
> "**Section 229. Recovery of Tax Erroneously or Illegally Collected.-** No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been 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, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.

> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: Provided, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Emphasis supplied*)

In determining the commencement of the two-year period in cases of VAT refunds, this Court's ratiocination in its Resolution in the case entitled **Atlas Consolidated Mining and Development Corporation**[22]**,** is apropos:

> ". . .the two year period should be counted from the date of filing of the corresponding VAT quarterly return which is within twenty (20) days after the close of each taxable quarter. This will harmonize Section 106 with Section 230 of the Tax Code which was interpreted by the Supreme Court in the cases Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Appeals, GR No. 83736, dated January 15, 1992; and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957, that the two (2) year period should be counted form the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of tax can be determined. **In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these things can only be determined if a return is filed. It is logical therefore, to conclude that the two year period should not be immediately counted from the close of the quarter but from the date of filing of the VAT return.**" (*Emphasis supplied*)

In the present case, not all the periods claimed by petitioner for tax refund or issuance of tax credit certificate fall within the two-year prescriptive

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[22] CTA Case No. 5296, July 20, 1998.

period for the filing of the suit in court. The VAT refund claimed for the last quarter of 2001 amounting to P1,156,552.36 has already prescribed. Petitioner's quarterly VAT return for the Fourth Quarter of 2001 was filed on January 15, 2002. The two-year period for the filing of a tax refund is properly reckoned from this date. However, the case before Us was filed only on January 26, 2004. Clearly, the claim for refund for the last quarter of 2001 has already prescribed.

***6th Requirement:* That the land subject of the purchase was used by the applicant in his VAT taxable business.**

Section 105 of the NIRC of 1997 defines the phrase **"in the course of trade or business"** in this manner:

> "The phrase **'in the course of trade or business'** means the **regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity**."

There is nothing in the records that would show the nature of business of petitioner. Admission of both parties only extend as far as acknowledging that petitioner "is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business located at No. 173 P. Gomez Street, Municipality of San Juan, Metro Manila."[23] No evidence, testamentary or documentary, was presented to

[23] Paragraph 1, Joint Stipulation of Facts and Issues, Docket, p. 54.

demonstrate the transactions of petitioner which may somehow be considered as compliance with the sixth requirement.

All the foregoing considered, the Court finds insufficient evidence to justify the granting of petitioner's claim.

WHEREFORE, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
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.
Associate Justice
Chairperson

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