REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISLA COMMUNICATIONS CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5448

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 17 1999

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DECISION

This is a petition seeking for the refund of the sum of P36,246,189.00 representing alleged erroneously or illegally collected value-added tax on Petitioner's importations of telecommunications equipment and accessories for the period December, 1994 to December, 1995.

Petitioner is a domestic corporation existing under and by virtue of Philippine laws and is a grantee of a legislative franchise under Republic Act No. 7372 to install, operate and maintain telecommunications services within the Philippines and international points and for other purposes.

For the purpose of carrying out said services, particularly that of providing telephone service based on GSM system (Global System for Mobile Communications) as authorized in its legislative franchise, Petitioner imported the required capital equipment which includes the cellular units that form an integral part of the equipment that make up the GSM system that the National Telecommunications Commission (NTC) has authorized said Petitioner to install and operate.

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According to Petitioner, under Sections 13 and 14 of RA No. 7372, it is allowed to import all its capital equipment on a tax and duty-free basis thus:

> "Sec. 13. From the date the National Telecommunications Commission allots the grantee the frequencies and wavelengths to be used by it, the grantee shall be allowed for a period of three (3) years <u>to import all its capital equipment on a tax and duty-free basis</u>."

> "Sec. 14. The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successor or assigns shall <u>pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof</u>: Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto." (Underscoring supplied)

Petitioner, however, was allegedly compelled to pay the VAT and duties on its importations because Respondent, through the Bureau of Customs, acting as its agent in the collection of taxes on imported goods, would not release the importations unless the VAT and duties thereon were paid.

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The Petitioner made about twenty-eight (28) importations of telecommunications equipment on various dates, between December 6, 1994 and December 23, 1995, and paid the VAT thereon in the total amount of ₱36,246,189.00, detailed as follows:

IMPORT DESCRIPTION	VAT PAID	DATE PAID
1. Car kits and batteries-348 units	₱ 16,878.00	12-20-94
2. Siemens P1-50 units	19,893.00	12-20-94
3. Siemens S3 handsets-250 units	580,200.00	01-06-95
4. S3+batteries-33 units	44,834.00	06-28-95
5. Nokia 2112 handsets-1000 units	1,207,502.00	07-07-95
6. Motorola 7200 handsets-2480 units	3,918,915.00	07-22-95
7. Motorola 7200 handsets-160 units	227,431.00	07-22-95
8. Motorola 7200 handsets-705 units	1,081,086.00	07-22-95
9. Robert Bosch-600 units	755,501.00	08-16-95
10. Motorola 7200 handsets-7000 units	7,981,823.00	09-22-95
11. Motorola 7200 handsets-9700 units	9,768,984.00	10-16-95
12. Nokia 2112 handsets-600 units	750,266.00	11-16-95
13. Nokia 2112 handsets-300 units	378,454.00	12-08-95
14. Nokia 2112 handsets-250 units	291,814.00	03-02-95
15. Nokia 2112 handsets-250 units	350,254.00	11-18-95
16. Siemens S3+handsets-200 units	258,161.00	02-09-95
17. Siemens S3+handsets-500 units	633,863.00	02-02-95
18. Nokia 2112 handsets-250 units	292,242.00	12-23-95
19. Nokia service kits	5,384.00	06-16-95
20. S3-1,300 units	1,644,840.00	02-28-95
21. Mobile Station-800 units	1,133,061.00	02-21-95
22. S3-1,000 units	1,302,222.00	03-15-95
23. Motorola Mobile Stations-150 units	191,715.00	02-03-95
24. Motorola handsets-1,070 units	1,117,908.00	12-06-94
25. Motorola 2200-205 units	260,220.00	03-29-95
26. Motorola 2200 handsets-100 units	127,811.00	03-24-95
27. Mobile Station 7200-200 units	256,476.00	02-01-95
28. Motorola handsets (500)-1,500 units	506,880.00	01-20-95
TOTAL	₱36,246,189.00	

Through a letter, dated November 5, 1996, and filed with the office of herein Respondent on November 11, 1996, Petitioner requested for the refund of the amount of ₱28,563,485.00 as erroneously or illegally collected

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VAT (Exh. A). Subsequently, an additional claim for refund in the amount of P7,682,704.00 was filed by Petitioner on November 27, 1996 (Exh. B).

As there was no action on the part of Respondent, the instant Petition for Review was filed on December 6, 1996 to toll the running of the two-year prescriptive period.

In his Answer, Respondent claimed, by way of Special and Affirmative Defenses, that:

> 7. The Petitioner's claim has partially, if not totally, prescribed;
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> 8. The Petitioner has no cause of action;
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> 9. The taxes sought by Petitioner to be refunded were presumed to have been paid and collected in accordance with revenue laws, rules and regulations, hence, not refundable;
>
> 10. The value-added taxes allegedly withheld must be shown to have been paid and remitted to the Respondent's bureau where the best evidence are the official receipts;
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> 11. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes. (CIR vs. Ledesma, 315 SCRA 35 (1975);
>
> 12. 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.

The issues We are tasked to resolve are: whether or not Petitioner's right to claim for a refund has already prescribed as alleged by Respondent, and whether or not Petitioner is exempt from the payment of value-added tax

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(VAT) pursuant to Sections 13 and 14 of R.A. No. 7372 and Sec. 23 of R.A. No. 7925.

We find it appropriate to rule first on the question of prescription before delving into the other issue because if the claim for refund has already prescribed, then there is no longer any need to discuss the second issue.

Respondent maintains that Petitioner's claim for refund has partially, if not totally prescribed.

This Court disagrees with Respondent.

Because of the circumstances surrounding this case where the value-added taxes were paid on Petitioner's importations, the prescriptive period provided under Section 230 of the Tax Code shall be applicable instead of the periods provided for under Section 106 (a), (b) and (c) of the Tax Code.

Section 230 of the Tax Code provides for a two-year period from payment of the taxes within which to claim for a refund. The records show that the first payment of value-added taxes on the importations of Petitioner was on December 20, 1995 onwards until January 20, 1995. The administrative claims for refund were filed by Petitioner on November 11, 1996 and November 27, 1996 (Exhibits "A" and "B") and the Petition for Review was filed on December 6, 1996. It is clear then that all payments of value-added taxes made by Petitioner starting from

December 20, 1994 up to January 20, 1995 fall within the two year period, hence, Respondent's argument with respect to prescription is without merit.

The second issue centers on the proper interpretation of the provisions of law upon which Petitioner anchors its claim for tax exemption: first, Sections 13 and 14 of RA 7372 providing for a period of three (3) years to import all its capital equipment on a tax and duty-free basis and the payment of franchise tax of 3% in lieu of all taxes on the franchise or earnings thereof and, second, Sec. 23 of RA 7925 providing for equality of treatment in the telecommunications industry.

According to Respondent, the exemption under Section 13 of RA 7372 refers only to direct taxes. Thus, as VAT is being an indirect tax, Petitioner should be held liable.

We do not agree.

The words used in the said Act are too plain and unambiguous to admit of the interpretation advanced by Respondent. The law provided for an importation of its capital equipment on a tax-free basis. If it intended to exempt the grantee only from direct taxes, it could have easily provided so. Petitioner in this case was able to prove that the units it imported are capital equipment falling under said Section 13 through a certification issued by the National Telecommunications Commission

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(NTC) (Exh. G-3). The importations were likewise made within the period of three (3) years from the date the NTC alloted the Petitioner the frequencies and wave lengths to be used by it, which is, April 6, 1994 (Exh. D-1). On the other hand, this Court has already settled the question of whether the "in-lieu-of-all-taxes" provision would include Petitioner's exemption from paying the value-added tax. In Our recently decided case of **PLDT vs. The Hon. Commissioner of Internal Revenue, CTA Case No. 5178, promulgated last February 18, 1998,** we reiterated Our previous ruling in the case of **PLDT vs. The Hon. Commissioner of Internal Revenue, CTA Case No. 5106, December 18, 1995,** thus:

> "Petitioner contended that the phrase "in lieu of all taxes" covers the exemption from the payment of the VAT on its purchases of imported equipments, machineries and spare parts on account of its paying the 3% franchise tax. This was intensified by BIR Ruling No. UN-140-94, dated April 19, 1994, which specifically confirms the opinion of petitioner on this aspect covering its VAT exemption. Thus, it states" (t)he 'in lieu of all taxes' provision under Section 12 of R.A.7082 clearly exempts PLDT from all taxes including the 10% value-added tax (VAT) prescribed by Section 101 (a) of the same Code on its importations of equipment, machineries and spare parts necessary in the conduct of its business covered by the franchise, except the aforementioned enumerated taxes for which PLDT is expressly made liable." Moreover, the above ruling has likewise been confirmed by the Department of Finance thru Acting Secretary Romeo L. Bernardo on January 5, 1995 addressed to petitioner, xxx"

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"The phrase "in lieu of" means instead of, in place of, or in substitution for (Black v. Barnes, 46 P. 2d 625, 626, 142 Kan. 381, Rutherland v. Oroville-Wyandotte Irr. Dist., 22 P. 2d 505, 218 Cal. 242, Words and Phrases, Vol. 21, p. 472). It does not mean "in addition to" (Gassman Const. Co. v. Baltimore Brick Co., 246 Md. 478, 228 A. 2d 472, 474 Black's Law Dictionary, 6th ed., 1990, p. 707). The "in lieu of" implies the existence of something for which a substitution is being made. Thus, the "in lieu of all other taxes" means that none other than the tax specified however described, can be demanded. It limits the liability to the specific tax (State of Tennessee v. Bank of Commerce, 53 F. 735, 736, Words and Phrases, Vol. 21, p. 474). Thus the phrase "in lieu of all taxes" has the effect of exempting from taxation the VAT (which is covered under the general term "taxes" under Section 12 of R.A. 7082) on the purchases of imported equipments, machineries and spare parts made by petitioner by virtue of its paying of the 3% Franchise Tax pursuant to Section 117 of the NIRC and Section 12 of R.A. 7082. The rationale or purpose for the exemption from all other taxes except the income tax and the real property tax granted on petitioner upon the payment of the 3% Franchise Tax is that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee" (Province of Misamis Oriental v. Cagayan Electric Power and Light Company, Inc., G.R. No. 45355, January 12, 1990, 181 SCRA 38).

Furthermore, there is nothing in the provisions of Section 12 of R.A. 7082 which can be construed as expressly excepting petitioner from the exemption to the VAT similar to the proviso on income tax and real property taxes. The only tax imposable on petitioner is the 3% Franchise Tax, the income tax and the real property tax. Otherwise, the law could very well have provided that petitioner should and is still liable to the VAT. It is an elementary rule in statutory construction that the exceptions in the law will not be enlarged beyond the actual signification of the words used or extended beyond the limits which the

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> words themselves actually set (De Jesus v. City of Manila, 29 Phil. 73)

This aforequoted decision of PLDT, in CTA Case No. 5106, was affirmed by the Court of Appeals in the case entitled Commissioner of Internal Revenue vs. PLDT, CA-G.R. SP No. 4081, dated February 16, 1998.

Petitioner also invokes Section 23 of Republic Act 7925 (Public Telecommunications Policy Act of the Philippines), which provides:

> "Section 23. Equality of Treatment in the Telecommunications Industry.-Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ***ipso facto*** become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise".

Respondent, however, alleges that under Republic Act No. 7716, otherwise known as the Expanded VAT Law and implemented in 1996, the services of franchise grantees of telephone and telegraph, radio and television broadcasting not falling under Section 117 of the Tax Code are already subject to VAT pursuant to Section 102 (now Sec. 108) of the Tax Code. Thus, according to Respondent, applying the rationale behind the ipso facto or most-favored treatment clause of the law (R.A. 7925), to place competing groups on equal footing and not give one an advantage over the other, then it is but fair that Petitioner's services will now be also subjected to the 10% value-added tax.

We are not convinced by Respondent's assertions. Since we have consistently held that the "in lieu of all taxes" provision includes exemption from paying the VAT, then to hold Petitioner liable in this case would seem violative of the "ipso facto" provision of Sec. 23 of R.A. 7925 providing for "equality of treatment in the telecommunications industry." Moreover, the instant petition for refund covers payments made from December 6, 1994 up to December 23, 1995 and the Expanded VAT Law was, according to Respondent, implemented only in 1996.

Finally, Petitioner has presented to the satisfaction of the Court the receipts issued by the Bureau of Customs with their corresponding disbursement vouchers, the Import Entry and Internal Revenue Declarations, and the Certifications issued by it to prove that the taxes subject of the instant Petition were paid and duly received by the said agency.

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Accordingly, Respondent is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of ₱36,246,189.00, representing erroneously paid value-added

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taxes on its importations of telecommunications equipment and accessories.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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